

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: NAVIDEA §
BIOPHARMACEUTICALS §
LITIGATION § Case No. 1:19-cv-01578-VEC
§ ECF

ORAL DEPOSITION OF
TERRY LEE ORR
NOVEMBER 16, 2021

ORAL DEPOSITION OF TERRY LEE ORR,
produced as a witness at the instance of the PLAINTIFF
NAVIDEA BIOPHARMACEUTICALS AND MACROPHAGE THERAPEUTICS,
INC., and duly sworn, was taken in the above-styled and
numbered cause on the 16th day of November, 2021, from
9:56 a.m. to 2:35 p.m., before TINA TERRELL BURNEY, CSR
in and for the State of Texas, reported by machine
shorthand, at the offices of Veritext Legal Solutions,
600 North Pearl, Suite 2230, Dallas, Texas 75201,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

<p style="text-align: right;">Page 6</p> <p>1 Murray, which was issued in rebuttal?</p> <p>2 A. No.</p> <p>3 Q. Now, in terms of what we'll be talking about</p> <p>4 today, let's agree on some terms. Navidea</p> <p>5 Biopharmaceuticals, you're familiar with that entity?</p> <p>6 A. Yes.</p> <p>7 Q. And we'll refer to that as Navidea, and we'll</p> <p>8 understand we are talking about Navidea</p> <p>9 Biopharmaceuticals, Inc., correct?</p> <p>10 A. Yes.</p> <p>11 Q. And Macrophage Therapeutics, Inc., you're</p> <p>12 familiar with that entity?</p> <p>13 A. I am.</p> <p>14 Q. And if we refer to Macrophage or MT, that will</p> <p>15 mean Macrophage Therapeutics, Inc. today. Is that okay?</p> <p>16 A. Yes.</p> <p>17 Q. When did you first start doing valuation work?</p> <p>18 A. I guess, as an audit partner, you address many</p> <p>19 valuation issues in auditing financial statements, you</p> <p>20 know, the carrying value of intangibles, you know,</p> <p>21 different markup value of items in financial statements.</p> <p>22 So I would say that's been -- I've been involved in</p> <p>23 making valuation assessments throughout my career.</p> <p>24 And then once I got out of public</p> <p>25 accounting and started doing advisory work, you know,</p>	<p style="text-align: right;">Page 8</p> <p>1 A. I was senior managing director, head of the</p> <p>2 forensic practice in Dallas.</p> <p>3 Q. And what generally were your responsibilities</p> <p>4 at FTI Consulting?</p> <p>5 A. Well, I led the practice in -- the forensic</p> <p>6 practice here in Dallas, which entailed conducting</p> <p>7 investigations of fraud, waste and abuse cases, and</p> <p>8 doing expert testimony work predominantly in damage</p> <p>9 calculations, lost profits, contract disputes.</p> <p>10 Q. Do you know if any of the engagements -- did</p> <p>11 any of the engagements at FTI Consulting involve valuing</p> <p>12 shares in publicly traded companies?</p> <p>13 A. At this time I can't think of -- there maybe</p> <p>14 were cases, but I can't think of a specific case.</p> <p>15 Q. So possibly, but you can't recall at this</p> <p>16 moment?</p> <p>17 A. I'm not remembering a specific case.</p> <p>18 Q. What was your role at Ryan Forensic?</p> <p>19 A. I was senior managing director at Ryan in</p> <p>20 their emerging forensic practice.</p> <p>21 Q. And what was the nature of your</p> <p>22 responsibilities there?</p> <p>23 A. The same, fraud, waste and abuse, and I did</p> <p>24 expert testimony.</p> <p>25 Q. Did you do any valuation of shares in publicly</p>
<p style="text-align: right;">Page 7</p> <p>1 and testifying in damage cases, then I would make</p> <p>2 valuations in those as well.</p> <p>3 Q. Why don't we go ahead -- we've marked as Orr 2</p> <p>4 a document that you've been kind enough to bring today.</p> <p>5 Can you tell me what Orr 2 is?</p> <p>6 A. Yes. It's my employment history or record.</p> <p>7 Q. And is this part of your CV?</p> <p>8 A. It is -- it was not part of what I attached to</p> <p>9 this report, and that's how come I brought it. But at</p> <p>10 times I do put this in as an attachment to my CV.</p> <p>11 Q. Because it does say Page 4 of 4 on the bottom,</p> <p>12 correct?</p> <p>13 A. Yes, it does.</p> <p>14 Q. And your CV that was attached to your report</p> <p>15 ends at Page 3 of 4, correct?</p> <p>16 A. It does.</p> <p>17 Q. And so is this Page 4 that would have been</p> <p>18 attached to your CV had you attached it?</p> <p>19 A. Yes, it is.</p> <p>20 Q. On Exhibit 2, can you tell me which of these</p> <p>21 were companies where you did audit work?</p> <p>22 A. All of the ones up through BDO. So the bottom</p> <p>23 four are all public accounting firms, and I was in audit</p> <p>24 in all of those firms.</p> <p>25 Q. And then what was your role at FTI Consulting?</p>	<p style="text-align: right;">Page 9</p> <p>1 traded companies at Ryan Forensic?</p> <p>2 A. Probably not at Ryan. As I reflect back on</p> <p>3 the cases there, I would think not.</p> <p>4 Q. And what did you do at Grant Thornton?</p> <p>5 A. Same thing. And I led the forensic practice</p> <p>6 at Grant Thornton here in Dallas.</p> <p>7 Q. And did you do any work involving the</p> <p>8 valuation of publicly traded shares at Grant Thornton?</p> <p>9 A. I'm trying to think if the companies that I</p> <p>10 did valuations on were public or private. I'm trying to</p> <p>11 remember. As we get more current, I'll remember the</p> <p>12 cases more specifically.</p> <p>13 There were some cases at Grant where the</p> <p>14 companies we were dealing with were public, and there</p> <p>15 was valuation work involved of those companies -- in</p> <p>16 those companies. I can't remember if it was</p> <p>17 specifically on -- it involved some acquisition targets</p> <p>18 and so... But I can't remember if the targets were</p> <p>19 public or if the company I was dealing with was public.</p> <p>20 But, yeah, at Grant there was valuation</p> <p>21 of either public or private shares of stock.</p> <p>22 Q. When you say there was valuation of public or</p> <p>23 private shares of stocks, are you talking about the per</p> <p>24 share price, or are you talking about valuing the</p> <p>25 company as a whole?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. It would be valuing the -- in these cases, it 2 was valuing the company, but the impact would be after 3 an acquisition, you know, what that -- if there would be 4 impact on the share price of the public companies. But 5 it was probably more associated with the acquisition 6 targets. 7 Q. Meaning valuing the acquisition target as to 8 how much it was worth? 9 A. Yes. 10 Q. Any others that come to mind with respect to 11 the question that I asked? 12 A. No. There's one predominant one that I 13 remember, but I don't remember, you know, valuing 14 specifically public company shares. 15 Q. What was your role at Kroll? 16 A. Kroll, same role through all of them. It 17 was I led the Dallas practice in their forensic 18 practice, fraud, waste and abuse. 19 Q. And did you do any valuation of shares in 20 publicly trade companies at Kroll? 21 A. All of the companies were private that I dealt 22 with at Kroll. 23 Q. And what's your role at HKA? 24 A. I'm a partner at HKA in their forensic 25 practice doing fraud, waste and abuse investigations and</p>	<p style="text-align: right;">Page 12</p> <p>1 was a startup forensic practice. It just was not 2 dealing with the things that I wanted to deal with. 3 Q. And what about for Grant Thornton to Kroll, 4 why did you leave Grant Thornton? 5 A. Grant went through a period of financial 6 troubles at Grant, and they cut back on their forensic 7 practices across the country. So they shut down a lot 8 of them. They shut down their practice here in Dallas. 9 Q. And why did you leave Kroll? 10 A. Kroll, I was brought in to expand the Texas 11 market. I was the only person in Dallas working at 12 Kroll, and there was -- they brought in one partner in 13 Houston as well. 14 And there was a change in leadership at 15 Kroll, and they decided they didn't want to expand more 16 aggressively in those markets, and it didn't make sense 17 to have one partner in Dallas and one partner in Houston 18 if they weren't going to hire the additional staff to 19 support them. 20 Q. Okay. And at HKA, have you done valuation of 21 shares in publicly traded companies? 22 A. I think this would be the first at HKA. 23 Q. What formal valuation training have you 24 received? 25 A. As a CPA audit partner for the extended period</p>
<p style="text-align: right;">Page 11</p> <p>1 expert testimony work. 2 Q. And why did you leave BDO to go to FTI 3 Consulting? 4 A. I got out of public accounting, primarily with 5 the change in Sarbanes-Oxley. I enjoyed more of the 6 consulting work that I was doing with my audit clients. 7 When I no longer could do consulting work since 8 Sarbanes-Oxley prohibited that, I wanted to get more 9 into a consulting role. 10 Q. And why did you leave FTI to go to Ryan 11 Forensic? 12 A. It was an FTI decision. I didn't leave them. 13 They had a big RIF. I was in the process of developing 14 a new product for them. And basically they had made the 15 decision that anyone that was below a certain revenue 16 generation was going to be let go. 17 I was told I was protected because I was 18 developing a new software package for FTI, and 19 ultimately that was not the case. 20 Q. Did that software package involve valuation of 21 shares in publicly traded companies? 22 A. No, it did not. 23 Q. Why did you leave Ryan Forensic to go to Grant 24 Thornton? 25 A. Just a better opportunity. That was -- Ryan</p>	<p style="text-align: right;">Page 13</p> <p>1 of time that I was, roughly, you know, more than 20 2 years, a lot of valuation work as a CPA of public 3 companies and their activities, not only on line items 4 for intangibles, but, you know, share values and 5 pollution issues in share prices, stock prices. 6 So as a CPA, there are specific guidances 7 for CPAs in doing that type of work, which is, you know, 8 work that I studied and work that I did in valuing -- 9 doing valuation work. Then I'm also -- as you'll notice 10 on my CV, I'm also a member of the AICPA forensic and 11 valuation services section. 12 Q. Have you become a member of that section? 13 A. There's tests and continued licensing. 14 Q. How often do you get licensed? 15 A. You're licensed once, and then you have to 16 pay -- like most of these, you have to pay an annual 17 fee. 18 Q. And how often do you have to test? 19 A. Just initial. 20 Q. Just initial? 21 A. Yeah. 22 Q. When did you take that test? 23 A. In that case I didn't need to take that test. 24 As a CPA, for the experience that I had, I was able to 25 obtain that without testing.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. So you just applied and --</p> <p>2 A. Your CPA is -- it's part of the AICPA. Now,</p> <p>3 today, it is something that you test for.</p> <p>4 Q. But you have never taken that test?</p> <p>5 A. No.</p> <p>6 Q. And is there continuing professional credits</p> <p>7 you have to obtain in valuation to maintain your</p> <p>8 membership in the section?</p> <p>9 A. It's maintained through -- I do take valuation</p> <p>10 continuing training, but it's part of the AICPA</p> <p>11 licensing that I'm required to maintain, 40 hours a</p> <p>12 year.</p> <p>13 Q. In valuation or in maintaining your AICPA</p> <p>14 membership?</p> <p>15 A. To maintain my AICPA membership.</p> <p>16 Q. So there's nothing specific -- is it correct</p> <p>17 that there's nothing specific to maintaining it at this</p> <p>18 point other than paying the membership fee every year?</p> <p>19 A. Well, and maintaining some level of continuing</p> <p>20 education. So there's -- you know, there's -- you have</p> <p>21 some latitude in what that education process is, but it</p> <p>22 has to be AICPA approved courses.</p> <p>23 So it could be under auditing. It could</p> <p>24 be under valuation. It could be under, you know, other</p> <p>25 kinds of qualifying testing -- or continuing ed, excuse</p>	<p style="text-align: right;">Page 16</p> <p>1 A. I am.</p> <p>2 Q. And you're not certified in those?</p> <p>3 A. No.</p> <p>4 Q. A double negative there. It's correct that</p> <p>5 you're not certified in those?</p> <p>6 A. That is correct. I'm not certified in those.</p> <p>7 Q. Have you published in the area of valuation?</p> <p>8 A. No.</p> <p>9 Q. Have you written any articles?</p> <p>10 A. No.</p> <p>11 Q. Taught any classes?</p> <p>12 A. No.</p> <p>13 Q. Edited any journals that deal with valuation?</p> <p>14 A. No.</p> <p>15 Q. Okay. Thank you.</p> <p>16 Let's take a look at your report, which</p> <p>17 is Exhibit 1. So who worked with you at HKA in</p> <p>18 preparing this report?</p> <p>19 A. I had two staff people that worked with me.</p> <p>20 Sam -- Samantha, I believe her name is Fargot.</p> <p>21 F-a-r-g-o-t, I believe. And Tina. And her name is --</p> <p>22 her last name is Asian, and I don't know how to</p> <p>23 pronounce it.</p> <p>24 Q. Do you know how to spell it?</p> <p>25 A. No. I could look and see, but off the top of</p>
<p style="text-align: right;">Page 15</p> <p>1 me.</p> <p>2 Q. Okay. But that 40 hours is to maintain your</p> <p>3 AICPA certification. It's not specific to valuation?</p> <p>4 A. Not specific to valuation.</p> <p>5 Q. The valuation, you can be a member as long as</p> <p>6 your AICPA certification is current, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. So you don't have to do valuation work to</p> <p>9 maintain your -- I forget the language that you used</p> <p>10 here.</p> <p>11 MR. ZIMMER: Objection.</p> <p>12 Q. I'll withdraw the question and just rephrase</p> <p>13 it here.</p> <p>14 So to maintain your membership in AICPA's</p> <p>15 forensic and valuation services section, you only have</p> <p>16 to maintain your membership in the AICPA and pay a</p> <p>17 separate membership fee for the section?</p> <p>18 MR. ZIMMER: Objection.</p> <p>19 A. That is correct.</p> <p>20 Q. And do you hold any certifications in</p> <p>21 valuation?</p> <p>22 A. Other than that, no.</p> <p>23 Q. And you're aware that there are certain</p> <p>24 valuation professions that you can be certified,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 17</p> <p>1 my head, I don't know how to spell it.</p> <p>2 Q. Okay. For your convenience, I'll just refer</p> <p>3 to them as Samantha and Tina.</p> <p>4 A. Yes.</p> <p>5 Q. What's Samantha's role at HKA?</p> <p>6 A. I believe she's a director.</p> <p>7 Q. And what are her qualifications?</p> <p>8 A. I would have to go look to see. I don't know</p> <p>9 offhand what they are specifically.</p> <p>10 Q. And what is Tina's role at HKA?</p> <p>11 A. She's a -- so Samantha, Sam, is a director. I</p> <p>12 said director. I believe Tina is a manager. So a</p> <p>13 manager -- a director is higher than a manager, so she's</p> <p>14 underneath Samantha.</p> <p>15 Q. And what did Samantha do for you in connection</p> <p>16 with this report?</p> <p>17 A. A lot of what she did was helped with the</p> <p>18 pagination, helped with just putting the report together</p> <p>19 from that standpoint, doing the research and things of</p> <p>20 that nature.</p> <p>21 Q. What sort of research did she do?</p> <p>22 A. Share value, tables that we have in here,</p> <p>23 running calculations on stock prices, putting -- putting</p> <p>24 a lot of the tables together. That was stuff she did.</p> <p>25 Q. Do you consider that work to have been</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 substantive towards your opinions?</p> <p>2 A. Well, it was work that I supervised, so I</p> <p>3 believe everything in my report is substantive. But on</p> <p>4 the opinions that I rendered, you know, it was --</p> <p>5 especially like on stock tables and stuff like that,</p> <p>6 it's part of my opinions.</p> <p>7 Q. And what did Tina do for you on this report?</p> <p>8 A. I'm sorry, I thought Tina --</p> <p>9 Q. Oh, that was Tina?</p> <p>10 A. Yeah, that was Tina. I'm sorry.</p> <p>11 Q. I think I said Samantha, but if I said Tina,</p> <p>12 the record will reflect it. But for clarification, the</p> <p>13 person you were discussing was Tina?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So now let's talk about what Samantha</p> <p>16 did on the report.</p> <p>17 A. Samantha would play the higher role in this,</p> <p>18 helped in -- assisted in putting the report together.</p> <p>19 Q. How did she assist in putting the report</p> <p>20 together?</p> <p>21 A. Most of it I would -- in this case, most of it</p> <p>22 I wrote, but she would have done a review of that. And</p> <p>23 then there was a second partner review of this report as</p> <p>24 well.</p> <p>25 Q. Who was that second partner?</p>	<p style="text-align: right;">Page 20</p> <p>1 Inc.'s, (Navidea) and Macrophage Therapeutics, Inc.'s</p> <p>2 (MT) breach of the August 14th agreement with</p> <p>3 Dr. Goldberg."</p> <p>4 Is that an accurate description of what</p> <p>5 you were retained to do?</p> <p>6 A. I think the real description of what I was</p> <p>7 retained to do is in Points 1, 2 and 3 below. That's an</p> <p>8 introductory paragraph with specificity of what I was</p> <p>9 asked to do are on the following points.</p> <p>10 Q. So you were asked to educate the finder of</p> <p>11 fact with respect to attributes of shares issued</p> <p>12 pursuant to Reg D, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And your report you believe does that?</p> <p>15 A. That was my attempt to do so, yes.</p> <p>16 Q. And you issued -- so that's educating,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. So that's not rendering an opinion, correct?</p> <p>20 A. That is correct.</p> <p>21 Q. I have obviously read your report, but what</p> <p>22 did you use to educate the finder of fact about Reg D?</p> <p>23 A. I talked about what Reg Ds are, some</p> <p>24 background on Reg Ds, what the rules are with regard to</p> <p>25 Section 506, 504. Those are specific sections of Reg D</p>
<p style="text-align: right;">Page 19</p> <p>1 A. David Duffus.</p> <p>2 Q. Can you spell his last name, please?</p> <p>3 A. I think it's D-u-f-f-u-s, I believe.</p> <p>4 Q. And what's the role of the second -- what was</p> <p>5 his role as a second partner reviewer?</p> <p>6 A. To look at the technical aspects of it. He is</p> <p>7 certified in valuation, and he looked through anything</p> <p>8 specifically on that part just to make sure that he was</p> <p>9 comfortable that it was correct.</p> <p>10 Q. And how much have you charged Dr. Goldberg for</p> <p>11 the report to date?</p> <p>12 A. It's an estimate. I believe it's about</p> <p>13 35,000.</p> <p>14 Q. And have you been paid the 35,000?</p> <p>15 A. Not yet.</p> <p>16 Q. How much have you been paid?</p> <p>17 A. There was a retainer, I believe, of ten, so it</p> <p>18 could be applied. But the terms of our engagement</p> <p>19 letter is that the ten would be applied to the last</p> <p>20 invoice. But I've received that ten.</p> <p>21 Q. And on Page 1 it says, "Scope of Assignment."</p> <p>22 It says, "HKA has been retained by Gregory Zimmer,</p> <p>23 Esquire, counsel on behalf of his client, Michael M.</p> <p>24 Goldberg, M.D. (Dr. Goldberg or Goldberg) to do the</p> <p>25 following as it relates to Navidea Pharmaceuticals,</p>	<p style="text-align: right;">Page 21</p> <p>1 that I thought were applicable. And then I addressed</p> <p>2 the issues related to -- or information around the</p> <p>3 requirements under Rule 144.</p> <p>4 Q. The next statement you said was, "to opine on</p> <p>5 whether the Navidea shares purportedly issued to</p> <p>6 Dr. Goldberg were issued consistent with those</p> <p>7 standards."</p> <p>8 A. Yes.</p> <p>9 Q. And that's an opinion you've rendered,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And your opinion is that the shares were not</p> <p>13 issued to Dr. Goldberg consistent with the standards of</p> <p>14 Reg D, correct?</p> <p>15 A. I think you've simplified it. The opinion is</p> <p>16 that the legends specifically in the shares issued under</p> <p>17 the requirements to issue shares under Reg D did not</p> <p>18 require certain legends that were in there. Reg D did</p> <p>19 not require certain of those legends to be there.</p> <p>20 So by Reg D not requiring, it was not</p> <p>21 issued in accordance to the requirements of Reg D.</p> <p>22 Q. Does Reg D require restrictions be placed onto</p> <p>23 shares?</p> <p>24 A. Typically you're going to have a restriction,</p> <p>25 I think, pretty broadly -- assume that you would -- in</p>

<p style="text-align: right;">Page 22</p> <p>1 that Reg D is a private offering, and you're getting 2 public shares. They're not tradable. They can't be 3 immediately traded publicly. So you typically are 4 always going to have that restriction on there. 5 That would be notification to anyone 6 looking at those shares that they cannot be publicly 7 traded. 8 Q. But does Reg D contain a requirement that 9 there be a restrictive legend placed on a share? 10 A. Yes. 11 Q. It does? 12 A. Yes. Because they are not publicly tradable. 13 I'd say generally. I mean, there may be some 14 exceptions, but generally it's going to require that. 15 Q. And is there specific language in the 16 regulation that you're relying on for that opinion? 17 MR. ZIMMER: Objection. 18 A. The concept, and I put it in my report, that 19 shares issued under Reg D have not gone through a public 20 filing and, therefore, are not publicly tradable. That 21 is a restriction limitation of Reg D that needs to be 22 noted on those shares. 23 Q. And is there specific language in Reg D that 24 says that? 25 A. I don't have all of it in front of me, but I</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. So is registering a share different than 2 removing a restriction on the share, or is it the same? 3 MR. ZIMMER: Objection. 4 A. To have the restriction removed, you have to 5 notify the company whose shares you're holding that 6 you've either met the requirement that you've held it 7 the required period of time, and, therefore, those 8 shares will be registered. And so by removing the 9 legends, they will register those shares, or those 10 shares have become part of -- included in part of a 11 public registration. 12 Q. But they can be included in public 13 registration even if they have never had a restrictive 14 legend on them, correct? 15 MR. ZIMMER: Objection. Is any of this 16 discussed in the report, Barry? This is outside the 17 scope of what we're here for today, right? We're here 18 to ask about the report. No? 19 MR. KAZAN: In the report -- Greg, you 20 know how we feel about lawyer conversations in these, 21 but that's what I'm trying to understand. 22 Q. In the report you suggest there are issues 23 with the restrictive legends placed on the stock. My 24 question is where in Reg D does it dictate what can or 25 cannot be in a restrictive legend on a stock?</p>
<p style="text-align: right;">Page 23</p> <p>1 will look at my report, and I believe I addressed that. 2 So if you'll look on Page 5 at the bottom 3 last paragraph it says, "Purchasers of securities 4 offered pursuant to Rule 506" -- which is Reg D -- 5 "receive restricted securities," meaning the securities 6 cannot be sold for at least six months or a year without 7 registering them. And then I give the reference from 8 where that language was obtained. 9 Q. But as you're sitting here today, you don't 10 know specifically what that language is, correct? 11 A. I can't quote it verbatim. 12 Q. And is registering a security the same as 13 removing a restriction on a security? 14 MR. ZIMMER: Objection. 15 A. Would you repeat that question again? 16 Q. You pointed to Page 5 as to the question, and 17 you cited to me language that says they can't be sold 18 without registering them. 19 A. Yes. 20 Q. And I've been asking you whether Reg D 21 requires that a restrictive legend be placed on a share. 22 A. Yes. 23 Q. And you've said you're relying on this 24 language for that. 25 A. Yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 MR. ZIMMER: Objection. 2 A. And I have pointed that language out to you, 3 so then had a follow-up question. And I don't think 4 we're going back to the same question I already 5 answered, are we? 6 Q. Well, the language you've pointed out to me 7 talks about registering a stock. 8 A. Right. 9 Q. The question I have is -- and you're saying 10 that the stocks have to be registered under Rule 506. 11 That's what's in your report, correct? 12 A. Correct. 13 Q. The question I have is where in 504 or 506 Reg 14 D does it say there needs to be a restrictive legend on 15 a stock subject to Reg D? 16 MR. ZIMMER: Objection. 17 A. So let me re-read what's in my report again. 18 "Purchasers of securities offered pursuant to Rule 506 19 of Reg D receive restricted securities." That 20 restricted security is the legend that says these cannot 21 be traded unless they are held for six months under 144, 22 Rule 144, or they have been included as part of a public 23 registration. 24 Q. So you're relying on the language that says 25 it's a restricted security and saying that means there</p>

<p style="text-align: right;">Page 26</p> <p>1 must be a physical restriction placed on the stock?</p> <p>2 MR. ZIMMER: Objection.</p> <p>3 A. It is a restricted security, and you have to</p> <p>4 notify users -- or holders and potential users, you</p> <p>5 know, if those shares were traded that there is a</p> <p>6 restriction. And then those restrictions under 506 and</p> <p>7 144 are that they have to be held a certain period of</p> <p>8 time.</p> <p>9 In this case, 144, through what I've</p> <p>10 studied of the case, it would have been six months, or</p> <p>11 they have to be part -- and then you have to notify the</p> <p>12 company to have those legends removed so they can</p> <p>13 incorporate those shares into their issued shares,</p> <p>14 reported shares, or they have to be included in a public</p> <p>15 registration.</p> <p>16 Those are the two requirements to get</p> <p>17 that legend removed saying that those shares are now</p> <p>18 tradable to the public.</p> <p>19 Q. To get the legends removed --</p> <p>20 A. I said to get that legend removed, which is on</p> <p>21 Reg D shares.</p> <p>22 Q. In order to get a legend -- so is there</p> <p>23 anything else that you can point to that says there's a</p> <p>24 requirement to put a restrictive legend on a security</p> <p>25 subject to Reg D or Rule 144?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. What is the breach you're referring to here?</p> <p>2 A. But for -- it's kind of a but for argument. I</p> <p>3 believe you're probably familiar with that. But for</p> <p>4 receiving the shares, what damages were received by not</p> <p>5 receiving those shares. I'm not digging into depths</p> <p>6 into the agreement, but if there was a breach, if there</p> <p>7 was a -- that he did not have access to the shares and</p> <p>8 use of the shares, what would have been the damages for</p> <p>9 not having the access to those shares?</p> <p>10 Q. Have you made an opinion that Navidea breached</p> <p>11 the August 14th agreement?</p> <p>12 MR. ZIMMER: Objection.</p> <p>13 A. No.</p> <p>14 Q. Have you made an opinion that Macrophage</p> <p>15 Therapeutics breached the August 14th agreement?</p> <p>16 A. Yes.</p> <p>17 Q. Is it because those are legal conclusions that</p> <p>18 you're not qualified to make?</p> <p>19 MR. ZIMMER: Objection. It's not in his</p> <p>20 report, so why does he have to explain why he didn't</p> <p>21 include something in his report?</p> <p>22 MR. KAZAN: The word breach is not in his</p> <p>23 report?</p> <p>24 MR. ZIMMER: He gives specific opinions.</p> <p>25 They are numbered, they are well supported, and none of</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. ZIMMER: Objection.</p> <p>2 A. I think that's what's in my report, and you</p> <p>3 know, I'm going to go with what I used in there. I</p> <p>4 could do additional research and see if there are</p> <p>5 additional references.</p> <p>6 But what you are doing is you have</p> <p>7 shares that were issued under Reg D, a private offering,</p> <p>8 a private issuing, not a public offering, and you cannot</p> <p>9 trade them, therefore, publicly. And because you cannot</p> <p>10 trade them publicly, a legend is put on to notify the</p> <p>11 holder and potential users of those shares that those</p> <p>12 shares are not publicly tradable until that legend is</p> <p>13 removed.</p> <p>14 Q. You've said that. What I'm asking is what's</p> <p>15 the source for the requirement to put a restrictive</p> <p>16 legend on the security?</p> <p>17 MR. ZIMMER: Objection.</p> <p>18 A. And I've gone back to the same answer that I</p> <p>19 have given you before in my Footnote Reference 22 -- or,</p> <p>20 excuse me, yes, 22, which goes back to Footnote 19.</p> <p>21 Q. On the top of Page 2, it says in part of the</p> <p>22 scope of your assignment, "Evaluate the damages</p> <p>23 sustained by Dr. Goldberg resulting from the breach."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 29</p> <p>1 them have anything to do with breach. They have to do</p> <p>2 with damages in two specific language items. There is</p> <p>3 nothing in there about a breach.</p> <p>4 Q. What's your understanding of what the breach</p> <p>5 is that you're trying to value damages for?</p> <p>6 MR. ZIMMER: Objection.</p> <p>7 A. I described it as a but for, but for not</p> <p>8 receiving the shares.</p> <p>9 Q. So if I ask -- forget it. I'm not going to</p> <p>10 say so if.</p> <p>11 How did Navidea breach the August 14th</p> <p>12 agreement?</p> <p>13 MR. ZIMMER: Objection.</p> <p>14 A. I think there's an assumption here. I'm not</p> <p>15 making -- I'm not rendering an opinion as to whether it</p> <p>16 was breached. You asked how they breached it. I'm not</p> <p>17 addressing how they breached it. I'm addressing it</p> <p>18 assuming there was a breach, a but for, the shares were</p> <p>19 not received, what would have been the damage?</p> <p>20 Q. And it references that you -- that your</p> <p>21 opinions are expressed to reasonable professional</p> <p>22 certainty, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Sorry, this is what I was looking for.</p> <p>25 It says your opinions are based upon your</p>

<p style="text-align: right;">Page 30</p> <p>1 experience, "as well as the information obtained through 2 my own research." What was your own research that you 3 did?</p> <p>4 A. I drafted this report. So going back and 5 researching additionally what the requirements were of a 6 Reg D and 144, refamiliarizing myself with those would 7 be, I guess, the research that was performed, looking at 8 share values.</p> <p>9 We're talking about a public company, 10 what the trading volumes were, what the share values 11 were from the time of the agreement to the time that I 12 wrote this report.</p> <p>13 Q. Are there sources you looked at that aren't 14 cited in this report?</p> <p>15 A. Not that I'm aware of. It would be an 16 oversight if there are.</p> <p>17 Q. I'm sorry?</p> <p>18 A. It would have been an oversight if there is.</p> <p>19 Q. And it says, "Information available in case 20 documents." What does that refer to?</p> <p>21 A. So I did get copies of depositions, filings 22 that were related to the case, the initial complaints, 23 and, you know, that's what I would call case documents.</p> <p>24 Q. Information provided by counsel, what 25 information --</p>	<p style="text-align: right;">Page 32</p> <p>1 this report?</p> <p>2 A. Specifically his financial capabilities, that 3 he financially did not need to convert the shares 4 immediately, and he had the financial wherewithal to 5 hold the shares. He wasn't dependent on the conversion 6 of that to feed his family, so to speak. His experience 7 in trading shares as an investor in roles that he had 8 held.</p> <p>9 He was with an investment firm, the 10 activity that they were involved in, trying to get a 11 sense of his awareness of how the markets worked, his 12 experience levels as an investor, things of that nature.</p> <p>13 Q. Did he provide you any documents that 14 demonstrated his traits you've described he told you 15 about?</p> <p>16 MR. ZIMMER: Objection.</p> <p>17 A. He indicated that there was -- he had been 18 involved in a number of successful endeavors in 19 biopharmaceuticals, that those investments had rewarded 20 him well. We talked about some of those companies that 21 he had worked with that had gone public that he had -- 22 he was the beneficiary of. Really, his knowledge and 23 expertise.</p> <p>24 Actually we went -- as I sit here now, we 25 went through some of his background training as a -- he</p>
<p style="text-align: right;">Page 31</p> <p>1 A. So case would probably be filings related to 2 the case. Information provided by counsel would have 3 been the depositions that I received.</p> <p>4 Q. Any other information provided by counsel?</p> <p>5 A. I'd have to go through the list, but if it 6 wasn't public information, then it's probably something 7 I received from counsel. You can see all of the Bates 8 numbers on the documents that I used. Those would have 9 been received from counsel.</p> <p>10 It's in my appendix too, the very last 11 page of the report.</p> <p>12 Q. And it also says, "Interviewing with 13 Dr. Goldberg." What information did you receive from 14 Dr. Goldberg?</p> <p>15 A. Certainly some background information on the 16 case. I talked with him about his -- a little bit about 17 his financial capabilities and in holding the shares, 18 was -- you know, financially was he able to hold the 19 shares through a period of time? Did he need money to 20 convert the shares since they were convertible, roles 21 that he had played in the company and at Macrophage -- 22 or, yes. I'm trying to think. I think that's kind of a 23 general summation, discussions about the case.</p> <p>24 Q. What did Dr. Goldberg tell you that you relied 25 upon in preparing your opinions that are contained in</p>	<p style="text-align: right;">Page 33</p> <p>1 became a doctor and then went back and got his MBA, and 2 really focused on, you know, medical biopharmaceutical 3 types of companies, investments, things of that nature, 4 his role in private equity firms and roles in private 5 equity firms.</p> <p>6 So, you know, if I had my notes in front 7 of me, I maybe could add to it, but it was of that 8 nature.</p> <p>9 Q. Did he provide you information regarding his 10 trading in the markets?</p> <p>11 A. No. I would say based on discussions with 12 him, it was apparent he was familiar with the markets, 13 had a good working knowledge of them, had roles as a 14 CEO, officer of public companies that would have 15 provided him background in how the markets worked.</p> <p>16 Q. But he didn't provide you any documents or 17 information saying, "I made 15 to 20 percent on my 18 holdings every year because I trade stock in the 19 market"?</p> <p>20 MR. ZIMMER: Objection.</p> <p>21 A. No, he did not.</p> <p>22 Q. Anything similar to that?</p> <p>23 MR. ZIMMER: Objection, form.</p> <p>24 A. He talked about companies that he had invested 25 in and had done well in but not to the specificity that</p>

<p style="text-align: right;">Page 34</p> <p>1 you have mentioned.</p> <p>2 Q. Those investments were effectively private</p> <p>3 investments that he was with either funds or private</p> <p>4 equity firms, correct?</p> <p>5 MR. ZIMMER: Objection.</p> <p>6 A. They were. And roles, I believe -- again, I</p> <p>7 don't have my notes in front of me, but I believe he had</p> <p>8 been an officer in some of those companies as well.</p> <p>9 Q. Turning to Page 3, you said -- I'm looking at</p> <p>10 the first full paragraph. The second sentence says, "At</p> <p>11 this time Navidea owns approximately 99.8 percent of MT.</p> <p>12 The remaining two percent is owned by Dr. Goldberg and</p> <p>13 Platinum-Montaur Life Sciences through convertible</p> <p>14 preferred stocks, of which Dr. Goldberg owned 40 percent</p> <p>15 and Platinum-Montaur owned 60 percent."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And you cite the first amended complaint for</p> <p>19 that information, correct?</p> <p>20 A. You have the footnote references there. All</p> <p>21 of that was -- Footnote 6, 7 and 8 are to the complaint.</p> <p>22 Footnote 9 regarding Platinum-Montaur, there is a</p> <p>23 reference to that, and I think you took it down through</p> <p>24 Footnote 10, which was from discussions with counsel and</p> <p>25 Dr. Goldberg.</p>	<p style="text-align: right;">Page 36</p> <p>1 assess. I was given an assignment to educate the finder</p> <p>2 of fact about Reg D, opine on the shares purportedly</p> <p>3 issued to Dr. Goldberg under Reg D, and evaluate</p> <p>4 damages, and assuming there was a breach, what those</p> <p>5 damages would be.</p> <p>6 Q. But in order to -- let's use Macrophage. In</p> <p>7 order to understand valuing damages of Macrophage, you</p> <p>8 have to understand the ownership structure, correct?</p> <p>9 A. The valuation -- I would say typically, yes,</p> <p>10 that there would be some requirement to understand the</p> <p>11 structure of it, who owned it, what the ownership</p> <p>12 percentages were. It was a subsidiary, and to do an</p> <p>13 extensive valuation of Macrophage would have been an</p> <p>14 extensive assignment. I did not do that, as you can see</p> <p>15 from my report. What I did do was, by reading through</p> <p>16 information in the depositions regarding -- I was trying</p> <p>17 to think if there was more information or if it was just</p> <p>18 the depositions, but regarding the potential investors</p> <p>19 into Macrophage and realizing that fair value on a</p> <p>20 private, you know, subsidiary of a public company could</p> <p>21 be assessed by the standard of a willing buyer, willing</p> <p>22 seller or willing investor to make an investment for a</p> <p>23 certain percentage would give you a valuation of that</p> <p>24 company without doing an extensive analysis of the value</p> <p>25 of that company.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Okay. Did you take the allegations in the</p> <p>2 first amended complaint to be true that are listed</p> <p>3 there?</p> <p>4 MR. ZIMMER: Objection.</p> <p>5 A. You'll have to refresh my memory on what the</p> <p>6 first -- what you're referring to.</p> <p>7 Q. You've cited to various paragraphs in the</p> <p>8 first amended complaint as the basis for your recitation</p> <p>9 of the background, correct?</p> <p>10 A. Yes.</p> <p>11 Q. So did you do anything to verify that what was</p> <p>12 said in the first amended complaint was accurate?</p> <p>13 MR. ZIMMER: Objection.</p> <p>14 That's your document, Barry. That's</p> <p>15 Macrophage's and Navidea's allegations in a lawsuit.</p> <p>16 What would he do to verify their own statements to the</p> <p>17 court?</p> <p>18 A. So the answer is no. I took that information</p> <p>19 in that document.</p> <p>20 Q. Did you ask Dr. Goldberg as to whether he</p> <p>21 agreed with these statements?</p> <p>22 A. No. That wasn't our topic of discussion.</p> <p>23 Q. If he denied these allegations, would that</p> <p>24 impact your opinion in any way?</p> <p>25 A. It wasn't -- that's not what I was asked to</p>	<p style="text-align: right;">Page 37</p> <p>1 And so taking that information and the</p> <p>2 testimony of the then CEO and I believe CFO at the same</p> <p>3 time officer, that filings that they had made or reports</p> <p>4 they had made to the SEC that they had potential</p> <p>5 buyers -- investors, not buyers but investors into</p> <p>6 Macrophage for \$25,000,000 established a willing buyer,</p> <p>7 a willing investor, a willing seller, established value</p> <p>8 that I used as an estimate of the value of Macrophage.</p> <p>9 Q. But that estimate is based on what the</p> <p>10 ownership structure of Macrophage was, correct?</p> <p>11 MR. ZIMMER: Objection.</p> <p>12 A. I didn't know how much the potential investors</p> <p>13 into Macrophage were going to receive for the</p> <p>14 \$25,000,000 investment. So I made some assumptions in</p> <p>15 range, developed a range. If they were not buying it at</p> <p>16 100 percent, which would be a sale, and it was going to</p> <p>17 continue to be a subsidiary of a public company, then</p> <p>18 the public company would have to have a controlling</p> <p>19 interest, not necessarily in shares, but control the</p> <p>20 decisions that were made in Macrophage to be</p> <p>21 consolidated into Navidea, that it was less than 100</p> <p>22 percent. And for Macrophage -- or Navidea to continue</p> <p>23 to have that control where Macrophage was consolidated</p> <p>24 had to be somewhat less than 50 percent.</p> <p>25 So I didn't have the exact structure, but</p>

10 (Pages 34 - 37)

<p style="text-align: right;">Page 38</p> <p>1 I made assumptions based on what was being reported to 2 the SEC about potential investors into Macrophage. 3 Q. Have you ever seen the agreement that governs 4 the preferred shares of Macrophage? 5 A. I have not. 6 Q. Would that be relevant to expressing an 7 opinion on the value of Macrophage? 8 A. Again, I didn't express an opinion. I did a 9 valuation to value the damages. So I valued a way 10 of assessing those, the value of Macrophage. And I used 11 market information that there was an investor willing -- 12 or investors willing to invest \$25,000,000 into 13 Macrophage, that they would have done the study of 14 preferred shares, common shares, whatever was in that 15 company to assess a value of the company based on the 16 interest that they were willing to receive from their 17 \$25,000,000 investment. 18 Q. Going back to my question: Would it have been 19 relevant to your opinion to see the agreement that 20 governed the preferred shares between Dr. Goldberg, 21 Platinum and the Navidea? 22 MR. ZIMMER: Objection, asked and 23 answered. 24 MR. KAZAN: I don't think it was 25 answered.</p>	<p style="text-align: right;">Page 40</p> <p>1 already been subject to due diligence and that those 2 potential investors had reviewed all the documents? 3 MR. ZIMMER: Objection. 4 A. Based on -- yes. Based on the -- what I read 5 in Jed's -- I can't remember his last name. 6 Q. Latkin. 7 A. Yes, Latkin. Testimony and filings he made 8 with the SEC, it seemed that those investments were 9 imminent, that they had been -- at the point of letter 10 of intent, that we have investors that were willing to 11 put 25,000,000 in. I didn't know the interest they were 12 receiving for that 25,000,000, but it sounded like that 13 process had progressed to the point where it was being 14 disclosed to the SEC as probable, as a high probability 15 so... 16 Q. But you don't know what the value of 17 Macrophage would have been based on those investments, 18 correct? 19 MR. ZIMMER: Objection. 20 A. Not without knowing what their percentage was. 21 I didn't know what they were getting as a percentage 22 of -- what they were getting for their 25,000,000. So I 23 made some assumptions that, since it wasn't a sale and 24 that Navidea continued to be the parent, that they 25 controlled the subsidiary. They had control of the</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. ZIMMER: You didn't like the answer, 2 but he gave you a five-minute answer, and it spoke 3 directly to the question. 4 MR. KAZAN: Craig, are you going to talk 5 the entire deposition? I mean, seriously. 6 MR. ZIMMER: I have talked for about 40 7 seconds out of the last hour, and I'm making a valid 8 objection. So proceed as you wish. 9 Q. Would it have been relevant to see the share 10 purchase agreement between Navidea, Macrophage -- I'm 11 sorry, Dr. Goldberg and Platinum-Montaur in expressing 12 your opinion? 13 MR. ZIMMER: Objection. 14 A. So I'm going to answer it very directly. 15 Q. Can you answer it with a yes or no? 16 A. Yes. That's what I was going to say, yes or 17 no. I'll give you a very direct answer. And the answer 18 was no, but it was based on the way I approached it 19 because of -- that's what I was attempting to explain. 20 I approached it from the standpoint that 21 investors willing to put \$25,000,000 into Macrophage had 22 done their analysis and knew what they were getting for 23 that, and so that 25,000,000, whatever their interest 24 they were receiving, established a value of Macrophage. 25 Q. So you assumed that that 25,000,000 had</p>	<p style="text-align: right;">Page 41</p> <p>1 subsidiary. 2 So these shareholders weren't -- it 3 wasn't a sale of 100 percent, so it had to be less than 4 50 percent for Navidea to continue being the majority 5 shareholder. That was kind of the benchmarks that I 6 used for coming up with a valuation of Macrophage. 7 Q. But you didn't say Navidea had to remain a 8 majority shareholder, correct? 9 A. To be consolidated, they had to maintain 10 control of that subsidiary for that subsidiary to be 11 consolidated. 12 Q. Right. But that doesn't mean that they had to 13 be majority shareholder to maintain control. You said 14 it could be by other means, correct? 15 A. It can be. 16 Q. Could it be by super voting shares perhaps? 17 A. It could be by super voting shares. That 18 information I didn't have. I tried to make some 19 assumptions, and I did state in my report it would be 20 controlled by either majority or, as you've pointed out, 21 some other means of control. 22 Q. In fact, your opinion on Macrophage is on Page 23 25, right, the opinion that you're rendering? 24 A. Like I said, it's what I was rendering. I 25 think I called it a valuation. So let me get to Page</p>

<p style="text-align: right;">Page 42</p> <p>1 25. Can you point out specifically what you're 2 referring to? 3 Q. Yes. It's Summary of MT Opinions. Do you see 4 that? 5 A. Oh, okay. 6 Q. Your opinion is, "Dr. Goldberg was damaged by 7 Navidea's failure to issue the MT super voting shares to 8 Dr. Goldberg." 9 Is that the sum total of your opinion 10 regarding the damages that Dr. Goldberg suffered as a 11 result of Navidea's failure to issue the MT super voting 12 shares? 13 A. Yes. That's all that's written there. 14 Q. Was that the best you could do to a reasonable 15 professional certainty? 16 MR. ZIMMER: Objection. 17 A. Well, I demonstrated already that through 18 potential investors coming in and making an investment 19 of 25,000,000 into the company, that there was value in 20 the company. I indicated in my report that super voting 21 shares have a higher value than common shares, regular 22 shares. 23 So if there was a value in Macrophage 24 and Mr. Goldberg did not receive shares, common or super 25 voting, that he was going to be damaged. And if they</p>	<p style="text-align: right;">Page 44</p> <p>1 assign a value to the damage, correct? 2 MR. ZIMMER: Objection. 3 A. Not enough information to assign a specific 4 value, but the fact that shareholders -- new 5 shareholders were willing to invest \$25,000,000 6 indicates that there is value. At that point in time 7 there was perceived value in Macrophage. 8 Q. How do you quantify the damage to Dr. Goldberg 9 for not receiving the MT super voting shares? 10 MR. ZIMMER: Objection. 11 A. No. 12 Q. No. I said how do you do it. 13 A. Oh, how would you do it? 14 Q. Yes. 15 A. At that point in time if it were done, that 16 would be a very extensive analysis because they didn't 17 have extensive sales. You would have to study their 18 technology, competitors in that market for that 19 technology, timing on what that technology or IP -- the 20 timing it would take to get that to marketability to 21 producing revenues. I mean, it would be an extensive 22 study. 23 Q. Which you did not do? 24 A. I did not do. 25 Q. And, therefore, you can't assign a number to</p>
<p style="text-align: right;">Page 43</p> <p>1 were super voting, they have more value than common 2 shares. 3 So there's value in Macrophage, he didn't 4 get the shares issued to him, and so there was damage to 5 him. 6 Q. How much? 7 A. I don't know exactly how much. I didn't 8 render an opinion -- I didn't do a full analysis of the 9 value of Macrophage. I just showed in my report that 10 there was value in Macrophage based on the reports to 11 the SEC that new investors were coming in with new 12 money, \$25,000,000, to invest in Macrophage. That shows 13 that there's value in Macrophage. 14 Q. Did those investments ever occur? 15 A. To my knowledge, no, they never did. 16 Q. Does that impact your opinion at all? 17 A. Well, value was -- at that time many things 18 happened after that. But at that point in time when 19 these events were going on, I believe there was value. 20 And my opinion is, if there was value, then he was 21 damaged by not getting shares. 22 So it didn't impact my opinion that he 23 was damaged, and I didn't say what the amount of damage 24 was, that there was damage. 25 Q. Because you did not have enough information to</p>	<p style="text-align: right;">Page 45</p> <p>1 the amount of damages that Dr. Goldberg suffered as a 2 result of not receiving the MT voting shares, right? 3 MR. ZIMMER: Objection. 4 A. I think I've answered that. I did not assign 5 a specific number, no. I did enough work to indicate 6 that there was value at that point in time in Macrophage 7 based on the outline that I've already -- testimony I 8 have already given in that because there was value and 9 he did not get the shares that he was promised -- or I 10 don't even want to get into any kind of legal rendition 11 of whether he was promised or not. 12 I assumed he was to receive and that by 13 not receiving those, there was damage to him. 14 Q. But you don't have a number for those damages, 15 correct? 16 MR. ZIMMER: Objection. Asked and 17 answered twice or three times. 18 A. No. 19 Q. Let me have you look at Page 3 of your report, 20 please. You quote from the August 14th, 2018 agreement, 21 correct? 22 A. Where? 23 Q. At the very bottom, the last sentence on the 24 page. 25 A. "The August 14th agreement required Navidea</p>

<p style="text-align: right;">Page 46</p> <p>1 to..."</p> <p>2 Q. Yes.</p> <p>3 A. Okay.</p> <p>4 Q. So you quoted from the August 14th agreement,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. May I show you what's been marked as Exhibit</p> <p>8 3?</p> <p>9 A. Thank you.</p> <p>10 Q. And that's the August 14th agreement that you</p> <p>11 referred to?</p> <p>12 A. Yes.</p> <p>13 Q. Is there a reason that you didn't quote the</p> <p>14 first sentence?</p> <p>15 MR. ZIMMER: Objection.</p> <p>16 A. So the sentence you're referring to is, "This</p> <p>17 agreement is dated effective" --</p> <p>18 Q. No, the beginning on Page 3. I apologize for</p> <p>19 interrupting there, but I just wanted to jump to the</p> <p>20 point.</p> <p>21 A. That was the first sentence, though, was it</p> <p>22 not?</p> <p>23 Q. It says, "Navidea's shares on the date of the</p> <p>24 consummation of the transaction, such date the closing</p> <p>25 date, Navidea will issue to Goldberg 23 and a half</p>	<p style="text-align: right;">Page 48</p> <p>1 events that were supposed to occur before the closing</p> <p>2 date, and many of those events had -- some of those</p> <p>3 events hadn't occurred when the shares were actually</p> <p>4 issued.</p> <p>5 So I discontinued using the closing date</p> <p>6 in my analysis as the date of share issuance and used</p> <p>7 one of the events of the closing date, the actual</p> <p>8 issuance of the shares, as the date for measuring when</p> <p>9 the closing date or the shares should be issued.</p> <p>10 Q. Didn't you earlier say that the damages is the</p> <p>11 failure to deliver the shares to Dr. Goldberg?</p> <p>12 A. Those were the Macrophage super voting, and I</p> <p>13 understand that those -- that was the topic we were</p> <p>14 talking on when I made that statement, I believe. And I</p> <p>15 believe those shares have never been issued, the super</p> <p>16 voting shares of Macrophage.</p> <p>17 Q. When we talked about the damage to</p> <p>18 Dr. Goldberg on Page 2 of your report, didn't you say</p> <p>19 you assumed a breach and that was the failure to deliver</p> <p>20 Dr. Goldberg the shares?</p> <p>21 MR. ZIMMER: Objection. Don't answer.</p> <p>22 The record will reflect what you said. You're not going</p> <p>23 to go back and tell him what you said earlier.</p> <p>24 If you want to ask him a question about</p> <p>25 what he's thinking or what he did, you can ask, but</p>
<p style="text-align: right;">Page 47</p> <p>1 million shares of Navidea common stock."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Is it relevant to your analysis what the</p> <p>5 closing date was?</p> <p>6 A. So the closing date is a defined term there,</p> <p>7 as I read through this agreement. I'm not trying to be</p> <p>8 the lawyer, but as a layman reading through this, the</p> <p>9 closing date appears to be a defined term that was</p> <p>10 driven on certain actions occurring.</p> <p>11 I looked at those actions and put them on</p> <p>12 a timeline, and not all of those dates -- not all of the</p> <p>13 actions required to meet the closing were addressed when</p> <p>14 the shares were ultimately issued to Dr. Goldberg. So I</p> <p>15 used the date on which the shares were issued for my</p> <p>16 analysis.</p> <p>17 Q. So the fact that there's a closing date</p> <p>18 reference by which date the shares should be issued is</p> <p>19 not part of your analysis?</p> <p>20 MR. ZIMMER: Objection.</p> <p>21 A. Repeat the question again.</p> <p>22 MR. KAZAN: Can you read it back, please?</p> <p>23 (Record read.)</p> <p>24 A. So the confusion was in the question after I</p> <p>25 had stated that I looked at events -- I had looked at</p>	<p style="text-align: right;">Page 49</p> <p>1 don't ask him to memorize what was stated on the record</p> <p>2 and repeat it back to you. That's not a fair question.</p> <p>3 Q. Isn't it correct that the damages you're</p> <p>4 analyzing are damages for failure to deliver Navidea</p> <p>5 shares to Dr. Goldberg?</p> <p>6 A. Part of the damages -- so there's two</p> <p>7 companies. So we've got Macrophage and super voting</p> <p>8 shares. And maybe the confusion on my part was that you</p> <p>9 went to the back of my report talking about Macrophage.</p> <p>10 Those shares, I don't believe, were ever issued.</p> <p>11 But shares were issued in Navidea, and I</p> <p>12 believe all of those shares -- I'm trying to think it</p> <p>13 through. I believe all of the Navidea shares were</p> <p>14 issued.</p> <p>15 Q. So what damages are you evaluating with</p> <p>16 respect to the Navidea shares?</p> <p>17 MR. ZIMMER: Objection.</p> <p>18 A. The Navidea shares were issued, but there are</p> <p>19 restrictions on those shares that prevent them from</p> <p>20 being usable beyond the normal restrictions of a Reg D.</p> <p>21 As we talked about Reg D, they're not tradable publicly</p> <p>22 until you've held them for at least six months. Then</p> <p>23 you have to register them. You know, you have to let</p> <p>24 the company know that you're going to trade them. They</p> <p>25 have to incorporate that into their filings. They have</p>

<p style="text-align: right;">Page 50</p> <p>1 to include them in a public filing.</p> <p>2 So besides that restriction, there were</p> <p>3 other restrictions on there that made the shares</p> <p>4 nontradable unless those legends were removed. And so</p> <p>5 while the shares were issued, they are not usable to</p> <p>6 anyone until those legends are removed.</p> <p>7 Q. So is this damage the failure to issue the</p> <p>8 Navidea shares or the failure to remove the restrictions</p> <p>9 on the Navidea shares?</p> <p>10 A. I would say that the damage was -- and you see</p> <p>11 this in my report on the timeline that I used -- is</p> <p>12 restricting the use of those shares beyond the</p> <p>13 requirements of Reg D, which we've talked about, and</p> <p>14 144.</p> <p>15 Q. Going back to the MT stock for a minute, super</p> <p>16 voting stock, who was responsible to issue that?</p> <p>17 MR. ZIMMER: Objection.</p> <p>18 A. I don't know that I know based on reading this</p> <p>19 agreement. If you'll give me a minute and let me read</p> <p>20 the agreement and see if --</p> <p>21 MR. ZIMMER: Well, I'm not going to let</p> <p>22 you give an opinion on the agreement. You didn't give</p> <p>23 opinions on the agreement when you were penning it, and</p> <p>24 I'm not going to let you opine on legal conclusions and</p> <p>25 contract language.</p>	<p style="text-align: right;">Page 52</p> <p>1 CEO of Macrophage.</p> <p>2 Q. Well, you spoke to Dr. Goldberg. Did you</p> <p>3 speak to him about his role as the CEO of Macrophage?</p> <p>4 A. I'm not sure if I had that specific discussion</p> <p>5 or talked about what he did in that role at Macrophage.</p> <p>6 I know he was the CEO. I don't -- I'm just reflecting</p> <p>7 back on my discussion with him. I don't believe we</p> <p>8 talked extensively more than he was the CEO about</p> <p>9 Macrophage.</p> <p>10 We talked about the product of</p> <p>11 Macrophage. We talked about, you know, its potential,</p> <p>12 but not beyond that.</p> <p>13 Q. And you don't know why the MT super voting</p> <p>14 stock was not issued, correct?</p> <p>15 MR. ZIMMER: Objection.</p> <p>16 A. I do not know. That was not part of my</p> <p>17 assignment.</p> <p>18 Q. Who is held liable if the exemptions in Reg D</p> <p>19 are not followed or not satisfied?</p> <p>20 MR. ZIMMER: Objection.</p> <p>21 A. Rephrase your question. Would the issuer of</p> <p>22 the shares be liable? Was that your question?</p> <p>23 Q. Well, my question was broader as to who is</p> <p>24 liable for a violation or a failure to satisfy the</p> <p>25 exemptions in Reg D.</p>
<p style="text-align: right;">Page 51</p> <p>1 We're here to discuss his report, his</p> <p>2 credentials, you know. We're not here to have him give</p> <p>3 you his opinion on documents and things that he hasn't</p> <p>4 even mentioned in report. I'm not going to let him</p> <p>5 answer the question.</p> <p>6 MR. KAZAN: You're going to instruct the</p> <p>7 witness not to answer?</p> <p>8 MR. ZIMMER: Repeat your question. You</p> <p>9 want him to interpret this agreement for you? I'm not</p> <p>10 going to allow him to do that.</p> <p>11 Q. Who was supposed to issue the MT super voting</p> <p>12 stocks?</p> <p>13 MR. ZIMMER: I'm going to instruct you</p> <p>14 not to answer that question.</p> <p>15 Q. Are you going to abide by Mr. Zimmer's</p> <p>16 instructions?</p> <p>17 A. I am.</p> <p>18 Q. Okay. Fair enough.</p> <p>19 Did you know Dr. Goldberg was the CEO of</p> <p>20 Macrophage Therapeutics from August 14th, 2018 to</p> <p>21 February 20th, 2019?</p> <p>22 MR. ZIMMER: Objection.</p> <p>23 A. I did know that he was the CEO for -- he was</p> <p>24 the CEO of Navidea, and part of the agreement was, as I</p> <p>25 read it, is that he would leave that position to become</p>	<p style="text-align: right;">Page 53</p> <p>1 A. The issuer of the shares would be the</p> <p>2 primary -- again, this is a little bit of a legal</p> <p>3 question. But, you know, from my reading of the</p> <p>4 regulations, I think the issuer would be held liable.</p> <p>5 Q. On Page 6 and 7, you have these statements in</p> <p>6 here about Rule 144.</p> <p>7 A. Yes.</p> <p>8 Q. Did you write this language?</p> <p>9 A. Some of it maybe was lifted out of</p> <p>10 regulations. I don't know. Something I was reading.</p> <p>11 Let me see if there's a footnote.</p> <p>12 MR. ZIMMER: Objection. Are you asking</p> <p>13 if he created the words or if he copied and pasted</p> <p>14 versus typing?</p> <p>15 MR. KAZAN: Greg, are you going to</p> <p>16 instruct him not to answer again? Because I think my</p> <p>17 question was did you write it.</p> <p>18 MR. ZIMMER: As in transcribe?</p> <p>19 MR. KAZAN: Greg, you're not answering my</p> <p>20 questions. Mr. Orr is.</p> <p>21 Q. Mr. Orr, did you write --</p> <p>22 MR. ZIMMER: I'm making an objection.</p> <p>23 I'm asking you to clarify the question. I didn't</p> <p>24 understand it.</p> <p>25 Q. Do you understand what I'm asking you when I</p>

<p style="text-align: right;">Page 54</p> <p>1 said did you write the language that's in your report?</p> <p>2 MR. ZIMMER: Objection.</p> <p>3 A. It was language that I put in the report. I</p> <p>4 may have gotten that language from some other source.</p> <p>5 Q. Okay. But you didn't cite to another source,</p> <p>6 did you?</p> <p>7 A. Well, Footnote 25 is referring to those</p> <p>8 sources that relate to that language.</p> <p>9 MR. KAZAN: Can we mark that as Exhibit</p> <p>10 4?</p> <p>11 (Exhibit 4 marked.)</p> <p>12 A. Okay.</p> <p>13 Q. Have you ever seen that document before,</p> <p>14 Mr. Orr?</p> <p>15 A. I have.</p> <p>16 Q. What is that?</p> <p>17 A. It's a summary of 144 written by Investor</p> <p>18 Publications.</p> <p>19 Q. And is this what you used to put the language</p> <p>20 into your report?</p> <p>21 A. Obviously, yes.</p> <p>22 Q. Do you remember doing it?</p> <p>23 A. Well, I wrote it, so I can't deny putting it</p> <p>24 in.</p> <p>25 Q. Okay. And you got this language from this SEC</p>	<p style="text-align: right;">Page 56</p> <p>1 a restriction when you are dealing with a private</p> <p>2 offering that was to be issued in a public filing -- or</p> <p>3 excuse me. Can I strike that?</p> <p>4 Where you would have a private issuance</p> <p>5 of shares of a public company. Now, an example might be</p> <p>6 if you were a control person within the company, which I</p> <p>7 made specific reference that Dr. Goldberg wasn't because</p> <p>8 he was no longer with Navidea. There are some</p> <p>9 exemptions that make it so you -- exemptions that you</p> <p>10 are not restricted in trading those shares. That would</p> <p>11 be the reasons why you would say almost always.</p> <p>12 But in this situation where you're</p> <p>13 dealing with someone that's not a control person in the</p> <p>14 public company, the issuing company, not an employee of</p> <p>15 that company when they received those shares -- I put</p> <p>16 that exception in for the reasons I told you, but right</p> <p>17 now I can't think of an exemption why you wouldn't have</p> <p>18 those in there where you were outside the company.</p> <p>19 If you're inside the company and a</p> <p>20 control person, you could get shares without a legend.</p> <p>21 Q. But they'd still be subject to the</p> <p>22 restriction?</p> <p>23 A. There's actually situations where within the</p> <p>24 company, as a control person within a company, you can</p> <p>25 get them. You just have to -- you don't have the</p>
<p style="text-align: right;">Page 55</p> <p>1 publication, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Did you do independent research or did you</p> <p>4 just take what the SEC said and put it into your report?</p> <p>5 MR. ZIMMER: Objection.</p> <p>6 A. No. I read through the literature. I</p> <p>7 actually read through this and the literature and</p> <p>8 compared it to make sure I was comfortable with it.</p> <p>9 Q. What literature are you referring to?</p> <p>10 A. The -- not literature, but the regulations,</p> <p>11 excuse me.</p> <p>12 Q. On Page 7 it says, "If one acquires restricted</p> <p>13 securities" -- I'm looking at the second full paragraph</p> <p>14 from the bottom on Page 7 of your report.</p> <p>15 A. Yes.</p> <p>16 Q. It says, "If one acquires restricted</p> <p>17 securities, they almost always will receive a</p> <p>18 certificate stamped with a restrictive legend."</p> <p>19 A. Yes.</p> <p>20 Q. It says almost always. Does that refresh your</p> <p>21 recollection as to whether a restricted legend is</p> <p>22 required to be on a restrictive security?</p> <p>23 MR. ZIMMER: Objection.</p> <p>24 A. I'm not aware of an example right now that I</p> <p>25 can think of where it would -- where you would not have</p>	<p style="text-align: right;">Page 57</p> <p>1 restrictions on your legends, but you have to register</p> <p>2 them with the SEC if you trade over certain volumes.</p> <p>3 And you see that under 144 disclosures in public</p> <p>4 companies, of officers of public companies.</p> <p>5 Q. Let's turn to Page 8 of your report, please.</p> <p>6 A. Okay.</p> <p>7 Q. You refer to restrictions imposed by legends</p> <p>8 placed on Navidea shares. Do you see where I am?</p> <p>9 A. C?</p> <p>10 Q. Do you see where I am?</p> <p>11 A. Then I said C.</p> <p>12 Q. Yes. Correct.</p> <p>13 A. Yes.</p> <p>14 Q. So it has an issuance of 12,777,274 shares.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know why that amount of shares were</p> <p>18 issued?</p> <p>19 A. I asked that question. When the agreement has</p> <p>20 certain share quantities that are supposed to be issued,</p> <p>21 why wasn't the agreement followed. I was told that --</p> <p>22 and I did not research it, but I was told that Navidea</p> <p>23 was restricted from issuing the number of shares in the</p> <p>24 agreement based on their trading volumes and SEC</p> <p>25 restrictions on the number of shares that they could</p>

15 (Pages 54 - 57)

<p style="text-align: right;">Page 58</p> <p>1 issue at that time. And that 12,000,000, I'm assuming 2 based on what I was told, the 12,000,000 was under that 3 restrictive volume. 4 And that's how come also why the 722 in 2 5 on my report on Page 9 was registered on Form S-8 and 6 not Reg D. 7 Q. You said you asked and you were told. Who did 8 you ask? 9 A. I asked counsel, and it maybe was in the 10 discussion. I can't remember if Dr. Goldberg was 11 involved, but I did ask counsel why this was not 12 followed, and that was his understanding. 13 Q. And when you say counsel, are you referring to 14 Mr. Zimmer? 15 A. Yes. 16 Q. And do you know why the 722,726 shares were 17 issued under S-8? 18 A. I'm not trying to be cute, but I tried to 19 address -- 20 Q. All three? 21 A. Yes, all of it at one time. The answer was 22 there was limitations on what could be issued. And I 23 don't know that they were SEC limitations. I maybe said 24 SEC, but the New York Stock Exchange, I think that was 25 the limiting factor. I'm not sure if it was the SEC or</p>	<p style="text-align: right;">Page 60</p> <p>1 A. It wasn't part of my assignment, and I do not 2 know. 3 Q. Whether an escrow agreement was entered into, 4 is that relevant to your calculation of damages? 5 A. I don't know if the escrow agreement was -- I 6 don't know if it was signed. I don't know -- I don't 7 know if -- my understanding is it's this agreement. 8 There are some disputes about this agreement. 9 So, please, I'm sorry, ask your question 10 again. I think I got off on the wrong trail. 11 MR. KAZAN: Can you re-read the question, 12 please? 13 (Record read.) 14 A. I assumed that if this agreement were followed 15 in which the escrow portion exists in the agreement, 16 that there would be an 18-month delay on when it 17 would -- on when the shares could be tradable. And I 18 used that in my calculations of when -- as I read this 19 agreement, what the timing would be when Dr. Goldberg 20 would be able to go into the market and trade those 21 shares, assuming that the 18-month -- it's if certain 22 things happened or 18 months later, so assuming it was 23 the 18 months later. You would have to wait 18 months 24 to trade shares under the escrow agreement. 25 So the answer is, yes, it played a factor</p>
<p style="text-align: right;">Page 59</p> <p>1 the New York Stock Exchange. 2 But there's a limit on the number of 3 shares they were able to issue, and so that is why they 4 issued the Form S-8 shares. 5 Q. On Page 10, you cite to the restrictive 6 legend. And I'm looking at the part right above Letter 7 D. It states, "The securities represented by this 8 certificate are subject to an escrow agreement and no 9 sale, loan, hypothecation, pledge, grant of any option 10 for the purchase of or other disposal of or any such 11 securities may be made except following their release 12 from escrow in accordance with the terms of such escrow 13 agreement." 14 Do you know what the escrow agreement 15 reference is to? Do you know what the escrow agreement 16 that is referenced here is? 17 MR. ZIMMER: Objection, form. 18 A. I believe by reading the agreement that you 19 gave me in Exhibit 3, there is share escrow, and my 20 understanding is it was related -- this legend related 21 to that in the agreement, the share escrow portion of 22 the agreement. 23 Q. Do you know whether an escrow agreement was 24 ever entered into? 25 MR. ZIMMER: Objection.</p>	<p style="text-align: right;">Page 61</p> <p>1 in my calculation because it limited when he would -- in 2 my calculation, when he would be able to trade the 3 shares. 4 Q. And you're timing that 18 months on when the 5 shares were issued to him, correct? 6 A. Yes. November 22nd, I believe. 7 Q. On Page 11, on the second half of the 8 document, the sentence starts, "The remaining portion of 9 the Navidea share legend is not authorized or required 10 Reg D." 11 Do you see that? I'm assuming that's one 12 of your typos. 13 A. The alleged typos that I mentioned, no. 14 Q. It's not one of your typos or it is? 15 A. No, it's not. 16 Q. It says, "is not authorized or required Reg 17 D." 18 A. Oh, yes. There's supposed to be required by. 19 There is supposed to be a by in there. I apologize. I 20 see what you're referring to now. 21 Q. When you say authorized, that it was not 22 authorized, what do you mean by that? 23 A. Similar to required. You're not -- it's 24 not -- it's not an authorized portion. It's not that 25 you couldn't put them in. It's not an acquired portion</p>

<p style="text-align: right;">Page 62</p> <p>1 of Reg D. You can put all kinds of legends in there, 2 but it is a legend specifically required by Reg D. 3 And the authorized/required is trying to 4 say authorized by Reg D language. Required by -- 5 authorized by Reg D language or required by Reg D 6 language. It may be a poor term, but that was the 7 thinking. 8 Q. So you're not saying that Reg D prohibited 9 Navidea from putting this legend on? 10 A. No, no. Absolutely not. 11 Q. On Page 12 of your report, there is a 12 reference to a lockup provision. Do you see that? 13 A. At the top I think is where you're referring? 14 Q. It's the first nonquoted paragraph, I guess. 15 A. Yes. 16 Q. It says, "The lockup provision contained in 17 the August 14th agreement." 18 What does that refer to? 19 A. I know if I show you -- you can't see it, but 20 on the agreement there is a section called lockup. 21 That's what I was referring to, in the escrow -- or the 22 lockup provisions of the agreement. 23 Q. It says -- and you've written, "However, the 24 lockup provision contained in the August 14th agreement 25 provides only that 'After the award and placement of the</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Is it because you're making an assumption that 2 his family members would follow the same trading 3 patterns that he was if permitted to freely trade 4 Navidea stock? 5 A. It says -- it's confusing the way it's written 6 for me. It says with members of Goldberg's family, 7 "neither Goldberg nor such family members." So it 8 includes him in there as though they are one unit. 9 Goldberg nor family, and I treated them as one. 10 Q. Were you aware that Dr. Goldberg wanted the 23 11 and a half million shares to be partially distributed to 12 his family members and not to him directly? 13 MR. ZIMMER: Objection. 14 A. I was not aware of that, other than, you know, 15 I could assume that there was some discussion that 16 family members were going to get some shares based on 17 this. But details beyond that, I don't have any 18 additional details. 19 Q. And if family members received the shares, 20 your damage analysis would not change? 21 MR. ZIMMER: Objection. 22 A. I don't know if it would have changed. Going 23 down that thought process, I would have wanted to 24 interview them just as I had done Dr. Goldberg. 25 Q. So can you state with a reasonable degree of</p>
<p style="text-align: right;">Page 63</p> <p>1 shares with members of Goldberg's family, neither 2 Goldberg nor such family members will transfer any of 3 the shares for six months after the closing date without 4 the written consent of Navidea." 5 A. Yes. 6 Q. And what is the reference to issuing -- what 7 is your understanding of the placement of shares with 8 Goldberg's family to refer to? 9 MR. ZIMMER: Objection. 10 A. Nothing more than what I read in the 11 agreement. It was -- it's the exact -- I'm just 12 double-checking. It's the exact language that was in 13 the agreement. 14 Q. Would your analysis of Dr. Goldberg's damages 15 change if shares were not issued to him directly but 16 were issued to his children? 17 A. In my analysis it would not have changed my 18 analysis of any damages because it appears that 19 Goldberg's family -- I guess if it was issued to his 20 family -- again, I'm not trying to be a lawyer, but if 21 it's issued to his family, it's in my analysis one and 22 the same as being issued to him. 23 Q. So it wouldn't make a difference to you if 24 they were issued to his family members? 25 A. It wouldn't, no.</p>	<p style="text-align: right;">Page 65</p> <p>1 certainty that your analysis wouldn't change if the 2 shares were issued directly to Dr. Goldberg's family 3 members? 4 MR. ZIMMER: Objection. 5 A. I think I answered that question. I think 6 you're just trying to clarify my answer. What I said is 7 before I would render opinions that my -- before I would 8 say whether my opinion would change or not, I would want 9 to do more work if in fact it was -- if the shares were 10 to be issued to family, interviewing them. Those 11 interviews would determine whether my estimations of 12 damages would have changed or not. 13 My assumption in this is Dr. Goldberg is 14 making the decision on those shares, and it's like I 15 said, I wasn't sure if it came to Dr. Goldberg and then 16 he issued them to the kids or if it was directly issued 17 to him. So it would take some -- potentially take some 18 additional inquiry and understanding of if he held them 19 and then transferred them to his family or if they were 20 directly transferred, you know, issued to the family. 21 My understanding is that all of the 22 shares were issued to Dr. Goldberg on 11/22, except 23 those that would have been -- now I'm questioning that 24 statement. I'd have to look -- I think all of the 25 shares were issued, as we talked about, to Dr. Goldberg.</p>

<p style="text-align: right;">Page 66</p> <p>1 I'd just need to go back and check my notes.</p> <p>2 Q. Yes. That's consistent with your report.</p> <p>3 A. Yeah.</p> <p>4 Q. You would need -- if the shares were to be</p> <p>5 issued directly in the name of Dr. Goldberg's children,</p> <p>6 you would need to do additional work to assess the</p> <p>7 damages in this case, correct?</p> <p>8 A. Well, is that a hypothetical? Because now I'm</p> <p>9 trying to remember if in fact all of the shares were</p> <p>10 issued to Dr. Goldberg and he received them all that</p> <p>11 were be to issued. Then you're asking a hypothetical?</p> <p>12 Q. Yes. It's a hypothetical in that there's a</p> <p>13 reference to his family members receiving shares. So</p> <p>14 there's an agreement. I understand you're not</p> <p>15 interpreting the agreement, but I also understand that</p> <p>16 you're assessing damages resulting from a breach of the</p> <p>17 agreement that you have assumed.</p> <p>18 MR. ZIMMER: If your opinion was not</p> <p>19 based on an assumption, then that's a hypothetical</p> <p>20 question, and he's not here to answer hypotheticals.</p> <p>21 Objection.</p> <p>22 A. Let me try to answer the question. I'm not</p> <p>23 trying to be evasive.</p> <p>24 One, my understanding is all the shares</p> <p>25 were issued to Dr. Goldberg, so that kind of makes this</p>	<p style="text-align: right;">Page 68</p> <p>1 shares.</p> <p>2 A. He actually received -- rather than me just</p> <p>3 regurgitating it, it's on Page 8, 9 and 9. Those are</p> <p>4 the shares that he actually received. So 12,777,274,</p> <p>5 722, 726, not Reg D but Form S-8 shares, and then</p> <p>6 5,000,000 shares that were, I believe, the lockup or --</p> <p>7 the lockup shares, yeah.</p> <p>8 Q. Do you know what. So that adds up to 18 and a</p> <p>9 half million.</p> <p>10 A. Does it? Okay. I apologize then. I know I</p> <p>11 had it in my workpapers, but I couldn't remember if it</p> <p>12 added up to 18, and that's what you're asking about,</p> <p>13 that 18. Okay.</p> <p>14 Q. Do you know what percentage of Navidea stock</p> <p>15 18 and a half million shares is equal to?</p> <p>16 A. I don't have the exact number. I know it's a</p> <p>17 significant number of shares, a significant percentage.</p> <p>18 I don't remember what the number was, but it's</p> <p>19 significant.</p> <p>20 Q. Did the percentage trigger any other</p> <p>21 restrictions on Dr. Goldberg by holding that many shares</p> <p>22 of a publicly traded company?</p> <p>23 MR. ZIMMER: Objection. Are you asking</p> <p>24 him for a legal opinion?</p> <p>25 Don't give a legal opinion. If you</p>
<p style="text-align: right;">Page 67</p> <p>1 a hypothetical. Two, if he controls the shares, they</p> <p>2 were issued directly to him and not to his children,</p> <p>3 then he controls when he would transfer them to his</p> <p>4 children. He would have that control.</p> <p>5 My analysis was done that he had control,</p> <p>6 and at this point in time, there is nothing to transfer.</p> <p>7 So when those shares -- if he had those shares and</p> <p>8 controlled those shares, then the damages are on his</p> <p>9 control, and I have no idea when he would pass those on</p> <p>10 to the kids.</p> <p>11 Q. On Page 13, let me ask you a question.</p> <p>12 Dr. Goldberg was issued ultimately 13 and a half million</p> <p>13 shares, correct?</p> <p>14 MR. ZIMMER: Objection.</p> <p>15 A. What he was issued and what the agreement says</p> <p>16 are different. We already talked about that, the</p> <p>17 differences in the numbers of shares and the tranches of</p> <p>18 those. The initial tranche as per the agreement was 13</p> <p>19 and a half million. That is correct. What he actually</p> <p>20 received was the 12,777,274.</p> <p>21 So the way you asked the question, I'm</p> <p>22 not sure what you are asking about. What he received or</p> <p>23 should have received under the agreement or what he</p> <p>24 received -- actually received in shares.</p> <p>25 Q. I'm asking what he actually received in</p>	<p style="text-align: right;">Page 69</p> <p>1 didn't study it and you didn't opine on it, then it's</p> <p>2 not a subject for today.</p> <p>3 A. So ask your question again.</p> <p>4 Q. Do you know if Dr. Goldberg's holding 18 and a</p> <p>5 half million shares of Navidea stock imposed additional</p> <p>6 restrictions on his ability to transfer them?</p> <p>7 MR. ZIMMER: Objection.</p> <p>8 A. I didn't look at that, and I didn't look at</p> <p>9 what the share volumes were at the times when he would</p> <p>10 actually have been able to trade them.</p> <p>11 Q. You didn't look at the share volumes?</p> <p>12 A. Well, I looked at share volumes, but not the</p> <p>13 fluctuation of his percentages because at certain points</p> <p>14 in time, share volumes go up and down. I mean, shares</p> <p>15 are traded. So I didn't -- while I looked at share</p> <p>16 volumes, I didn't do it in correlation to what his</p> <p>17 shares would be and didn't look at any additional</p> <p>18 restrictions. I wasn't asked to do that.</p> <p>19 Q. If there were further restrictions on his</p> <p>20 stock, would that lower the value of the damage number</p> <p>21 you came up with?</p> <p>22 MR. ZIMMER: Objection.</p> <p>23 A. It's a speculative response to your question.</p> <p>24 I mean, I don't know based on what levels he could trade</p> <p>25 under those restrictions because there's percentages,</p>

<p style="text-align: right;">Page 70</p> <p>1 and so where those percentages would be, you know, where</p> <p>2 his block would be.</p> <p>3 So I don't know if he could have timed</p> <p>4 those within the same trading blocks that I outlined or</p> <p>5 not.</p> <p>6 Q. So you assume there were no other restrictions</p> <p>7 other than the restrictive legends?</p> <p>8 A. Yes. That is -- you can read that from my</p> <p>9 opinion. I didn't break it up and address any of those</p> <p>10 additional restrictions or my opinion in my report.</p> <p>11 Q. Page 13, right above E says "This legend is</p> <p>12 not authorized or required for Form S-8 or shares issued</p> <p>13 in accordance with Form S-8 or shares issued under</p> <p>14 Regulation D, and the language of the legend differs</p> <p>15 from the lockup language contained in the August 14th</p> <p>16 agreement and is not authorized or required by Reg D."</p> <p>17 Again, when you say authorized here, are</p> <p>18 you saying that these legends were prohibited by S-8?</p> <p>19 A. No.</p> <p>20 Q. What did you mean by that the legend is not</p> <p>21 authorized by Form S-8?</p> <p>22 A. I think I answered that, so I'll try to make</p> <p>23 my answer consistent, but --</p> <p>24 Q. I was going to say, if it's same explanation</p> <p>25 that you gave for Reg D, you can say that.</p>	<p style="text-align: right;">Page 72</p> <p>1 prohibited. Authorized means in the canon of</p> <p>2 regulations, is it indicated that it should be -- you</p> <p>3 know, is it required? Is it authorized? It's not</p> <p>4 prohibited, but it's not something that you would have</p> <p>5 to put in.</p> <p>6 Q. Thank you.</p> <p>7 And, yes, you may use the restroom.</p> <p>8 (Lunch recess.)</p> <p>9 Q. Mr. Orr, let's turn to Page 23 of your report.</p> <p>10 I want to go to the summary of the Navidea opinions that</p> <p>11 you have down there. Are you with me there?</p> <p>12 A. Yes.</p> <p>13 Q. All right. We've talked about your discussion</p> <p>14 regarding the restrictions relative to Reg D. But in</p> <p>15 opinion A, you state that the legends were not</p> <p>16 authorized by the terms of the August 14th agreement.</p> <p>17 Do you see that?</p> <p>18 A. I see it, yes.</p> <p>19 Q. Is that a legal opinion?</p> <p>20 A. I was not attempting to render a legal</p> <p>21 opinion. What I was attempting to say is that the terms</p> <p>22 of the August 14th agreement are that Mr. Goldberg would</p> <p>23 receive shares issued in accordance with Reg D. It's</p> <p>24 more of a statement of fact that the legends on the</p> <p>25 shares that were issued were more extensive than what</p>
<p style="text-align: right;">Page 71</p> <p>1 A. It is the same.</p> <p>2 Q. So it's not that it was prohibited, but it's</p> <p>3 not required, correct?</p> <p>4 MR. ZIMMER: Objection. You're asking</p> <p>5 him to rely on prior testimony, so he has no need to</p> <p>6 recharacterize it and it won't change what he said</p> <p>7 earlier.</p> <p>8 MR. KAZAN: Fine.</p> <p>9 Q. You know what, Mr. Zimmer thinks that you need</p> <p>10 to explain --</p> <p>11 MR. ZIMMER: No. The way you're</p> <p>12 approaching it --</p> <p>13 MR. KAZAN: Mr. Zimmer, stop. It's my</p> <p>14 deposition. Mr. Zimmer --</p> <p>15 MR. ZIMMER: I'm going to make a</p> <p>16 statement on the record before or after your question.</p> <p>17 MR. KAZAN: Mr. Zimmer, it's my</p> <p>18 deposition.</p> <p>19 Q. Mr. Orr --</p> <p>20 A. Can I use the restroom?</p> <p>21 Q. After you answer this question.</p> <p>22 Mr. Orr, what do you mean by the legend</p> <p>23 is not authorized or required by Form S-8?</p> <p>24 A. Again, where I was starting to go with the</p> <p>25 answer is exactly what I had said before. It's not</p>	<p style="text-align: right;">Page 73</p> <p>1 were required by Reg D.</p> <p>2 That's all that I'm attempting to say.</p> <p>3 And, therefore, because of that, they're not in</p> <p>4 accordance with the agreement in that shares would be</p> <p>5 issued in accordance with Reg D.</p> <p>6 Q. Well, what I'm trying to determine -- let me</p> <p>7 just rephrase that.</p> <p>8 Are you interpreting the August 14th</p> <p>9 agreement when you come up with your conclusions?</p> <p>10 A. I'm interpreting one small aspect of the</p> <p>11 agreement, and that is that the legends on the shares</p> <p>12 that were issued were more extensive than what were</p> <p>13 required by Reg D and, therefore, were different than</p> <p>14 saying the shares were issued in accordance to Reg D.</p> <p>15 Q. So your opinion is that Navidea had an</p> <p>16 obligation to issue 23 and a half million shares to</p> <p>17 Dr. Goldberg in accordance with Reg D?</p> <p>18 MR. ZIMMER: Objection. Are you talking</p> <p>19 about what's in the report or some opinion he has</p> <p>20 outside the report?</p> <p>21 Q. Can you answer my question?</p> <p>22 A. Yeah, I'm reading the agreement, and here's</p> <p>23 what I'm attempting to address and this is all. Navidea</p> <p>24 will issue 23 and a half million shares of Navidea</p> <p>25 common stock, and then, you know, it breaks it down into</p>

<p style="text-align: right;">Page 74</p> <p>1 two tranches. The shares will be issued under Reg D of</p> <p>2 the Securities Act of 1933.</p> <p>3 Q. When was Navidea to issue those shares?</p> <p>4 MR. ZIMMER: Objection, form.</p> <p>5 A. I'm not making an interpretation when any of</p> <p>6 that -- I'm just saying -- what I was attempting to say</p> <p>7 here is that it's that portion only, the reg -- issued</p> <p>8 under Reg D, that the legends that are on the shares</p> <p>9 were more extensive than were required by Reg D. That's</p> <p>10 all I'm trying to say.</p> <p>11 Q. It is clear that your opinion is that the</p> <p>12 restrictive legends are not required under Reg D.</p> <p>13 A. Yes. That's all I'm --</p> <p>14 Q. But we've had a back-and-forth today over to</p> <p>15 what extent you're interpreting the obligations of</p> <p>16 Navidea under the August 14th agreement, and I'm trying</p> <p>17 to determine if you're making that opinion.</p> <p>18 A. No, I'm not making the opinion of their</p> <p>19 obligation to pay or when they pay. I'm just -- my</p> <p>20 opinion is intended to be that it was not issued under</p> <p>21 the requirements. As we've discussed the requirements</p> <p>22 of Reg D, that the additional legends were not required</p> <p>23 by Reg D. That's all I'm attempting to say here.</p> <p>24 Q. But would you agree that you have the</p> <p>25 requisite expertise to determine whether the shares were</p>	<p style="text-align: right;">Page 76</p> <p>1 MR. ZIMMER: Objection.</p> <p>2 A. -- only the basic restrictions of Reg D.</p> <p>3 Q. And in B, which I think you might have</p> <p>4 actually referenced in talking to me, I'm not sure, but</p> <p>5 let me just clean the table so we can ask the question.</p> <p>6 A. Okay.</p> <p>7 Q. It says, "Navidea failed to issue shares due</p> <p>8 to Dr. Goldberg on January 2nd, 2019 under the terms of</p> <p>9 the August 14th agreement."</p> <p>10 Is that an opinion as to what Navidea's</p> <p>11 obligations were under the August 14th agreement?</p> <p>12 A. No. Again, what I'm trying to do is the same</p> <p>13 as I did up above under Reg D, that those were -- that</p> <p>14 those were not issued in accordance with Reg D</p> <p>15 requirements, that they had additional legends on them.</p> <p>16 Q. So you're not opining as to whether Navidea</p> <p>17 had an obligation to issue shares to Dr. Goldberg under</p> <p>18 the terms of the August 14th agreement on January 2nd,</p> <p>19 2019?</p> <p>20 A. I don't know if the terms of that agreement</p> <p>21 were met or not. That was not my scope of my work. So,</p> <p>22 no, I was not attempting to do that.</p> <p>23 Q. So do you think D is still an accurate</p> <p>24 statement of the opinion that you're trying to</p> <p>25 represent?</p>
<p style="text-align: right;">Page 75</p> <p>1 issued -- whether the lockup legend was authorized by</p> <p>2 the terms of the August 14th agreement?</p> <p>3 MR. ZIMMER: Objection.</p> <p>4 A. Again, the only thing there, it's the same</p> <p>5 concept in B as in A, that the additional legends make</p> <p>6 it so it's not in accordance with the requirements of</p> <p>7 Reg D.</p> <p>8 Q. Understood. But you keep -- you reference the</p> <p>9 August 14th agreement. Are you interpreting the August</p> <p>10 14th agreement?</p> <p>11 MR. ZIMMER: Objection.</p> <p>12 A. I am not attempting to make a legal</p> <p>13 interpretation of the agreement. I told you a couple of</p> <p>14 times what I intended. Now, maybe the criticism is that</p> <p>15 I didn't word it well, but my intention is to -- as you</p> <p>16 read through my report, it supports this conclusion, is</p> <p>17 that the shares that were issued had additional legends</p> <p>18 that were not required by Reg D. That is all I am</p> <p>19 trying to interpret of the agreement.</p> <p>20 Q. So you're not interpreting what the agreement</p> <p>21 required with respect to the lockup provision or the</p> <p>22 escrow?</p> <p>23 A. No.</p> <p>24 Q. Or the restriction that was ultimately placed?</p> <p>25 A. No --</p>	<p style="text-align: right;">Page 77</p> <p>1 A. When you read through my report and I talk</p> <p>2 about the differences between Reg D requirements and the</p> <p>3 additional legends, I think it supports what I'm</p> <p>4 attempting to say. And that is he did not get shares</p> <p>5 issued on January 2nd limited to the restrictions</p> <p>6 only -- only limited to the restrictions required by Reg</p> <p>7 D.</p> <p>8 Q. Independent of the August 14th agreement then?</p> <p>9 A. Yeah, I'm not -- I don't know if they were</p> <p>10 issued -- the August 14th agreement says that they will</p> <p>11 be issued under Regulation D of the Securities Act. I'm</p> <p>12 saying that Reg D -- the issuance of shares under that</p> <p>13 has one restriction. These are nontradable to the</p> <p>14 public. That's the only requirement that it has.</p> <p>15 Those shares both -- well, all of the</p> <p>16 shares that were issued had additional restrictions, and</p> <p>17 that's all I'm attempting to say.</p> <p>18 Q. So you're not trying to opine on anybody's</p> <p>19 obligation under the August 14th agreement, correct?</p> <p>20 A. No. To me, it's -- certain shares were</p> <p>21 supposed to be issued in a certain manner. All I'm</p> <p>22 saying is they were not issued in that manner.</p> <p>23 Q. But you're assuming there was an obligation to</p> <p>24 issue shares in that manner?</p> <p>25 MR. ZIMMER: Objection.</p>

<p style="text-align: right;">Page 78</p> <p>1 A. I'm not assuming it. It says that they 2 will -- I've read you the line now a couple of times. 3 Navidea shares, the last sentence is what I am focused 4 on. "Shares will be issued under Reg D of the 5 Securities Act." 6 I'm saying the Securities Act has one 7 specific limitation that should have been on the shares, 8 on the legends. There were additional legends. Those 9 are in addition to the requirement of Reg D. 10 Q. But you're ignoring the first part of the 11 sentence there that says upon a closing date. 12 MR. ZIMMER: Objection. 13 A. No. The shares will be issued under Reg D. 14 It doesn't say upon a closing date. I've read you the 15 sentence several times. I mean, you've got to go down 16 in other places on closing date. 17 I'm not trying to talk about the closing 18 date. I'm just saying shares will be issued under Reg 19 D, the last sentence under Navidea shares. 20 Q. So what you're saying is the shares will be 21 issued under Reg D of the Securities Act. That's the 22 statement you are trying to opine about here? 23 A. Yes. 24 Q. Okay. And even though shares is defined as 25 being issued on the date of the closing date, you don't</p>	<p style="text-align: right;">Page 80</p> <p>1 If you could go to C, it says, "When 2 agreement" -- sorry. "When agreement was executed, 3 Navidea intended to initiate reverse split of stock." 4 Is that an opinion? 5 A. No. It's really a statement of fact, in 6 talking to Dr. Goldberg and testimony of -- or in the 7 deposition of Latkin, that it was known beforehand -- 8 before this agreement that a potential stock split was 9 anticipated. 10 Q. Have you formed an opinion as to whether the 11 23 and a half million shares were subject to the stock 12 split or not? 13 MR. ZIMMER: Objection. 14 A. No. In my analysis, I don't say -- in fact, 15 my damages says if it's determined that it's pre-split 16 shares, then this is how you do it. If it's determined 17 that it's post-split shares, this is how I do it. 18 So I'm not forming an opinion on which 19 way it should be. I just said, "Whichever way it is, 20 here's what the damages will be." 21 Q. Is the delta between the damages pre and 22 post-split simply multiplying your numbers by 20? 23 MR. ZIMMER: Objection. 24 A. It's not exactly that way. In the post-split 25 shares, you have market values. And so if you said the</p>
<p style="text-align: right;">Page 79</p> <p>1 think that's relevant to your opinion? 2 A. I'm not trying to interpret when the closing 3 date was. I think we discussed I used a closing date 4 of -- or when the shares were issued, when they were 5 actually issued of November 22nd. The closing date is 6 defined in here, and it says that those shares aren't 7 going to be even issued until all the terms supporting 8 the definition of closing date are met. As far as I 9 know, some of those terms weren't met, yet the shares 10 were issued. 11 So I'm not trying to opine on any of 12 that. I'm just trying to say the shares that were 13 issued, whether they were issued in accordance with this 14 agreement or other aspects of this agreement, timing on 15 the closing date, things of that nature, I'm just saying 16 they were not issued in accordance with Reg D 17 requirements. 18 Q. Would a more accurate statement of B be 19 Navidea failed to issue shares to Dr. Goldberg on 20 January 2nd, 2019 in accordance with Regulation D of the 21 Securities Act? 22 MR. ZIMMER: Objection. 23 A. That would be more accurate as what I was 24 opining on, yes. 25 Q. Thank you.</p>	<p style="text-align: right;">Page 81</p> <p>1 shares should have been issued on this date or over this 2 range or in this time period, you have data on a 3 post-split share value, and you can use that data to 4 determine the value or the damages. 5 If you do pre-split, then there is no 6 data, and so then I outlined a way to calculate what the 7 damages would have been on pre-split shares. Because 8 you put that many additional shares into the market, 9 it's going to change the value of the per share values. 10 MR. ZIMMER: Can we go off the record for 11 one second? 12 MR. KAZAN: Well, I'd like him to finish 13 his answer. 14 MR. ZIMMER: Were you not finished? I 15 apologize. I thought you were finished. 16 THE WITNESS: No, I was. I was done. 17 MR. KAZAN: Okay. 18 (Discussion off the record.) 19 Q. You assigned a range of damage numbers based 20 on the timing of transferability of the stock, correct? 21 Actually let me rephrase. You assigned 22 certain ranges of numbers to Dr. Goldberg's damages 23 related to Navidea stock based on dates that he would 24 have sold that stock, correct? 25 A. Yes.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. And you used the post-split numbers to do</p> <p>2 that, correct?</p> <p>3 A. Yes.</p> <p>4 Q. You did not make any effort to calculate it on</p> <p>5 a pre-split basis, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. And there's not a simple mathematical formula</p> <p>8 that you would apply on the pre-split shares?</p> <p>9 A. I identified how I would calculate the damages</p> <p>10 on pre-split. So if -- let me define pre-split in my</p> <p>11 mind. Pre-split is if it was determined by the court</p> <p>12 that Dr. Goldberg was supposed to get 23 and a half</p> <p>13 million shares today, how would you value the damages</p> <p>14 because putting that many shares into the market will</p> <p>15 change the marketplace?</p> <p>16 So I outlined a -- you know, they</p> <p>17 couldn't issue that many after the post-split anyway.</p> <p>18 So I identified how you would come up with the damage</p> <p>19 valuation of adding that many more shares into it.</p> <p>20 Q. Okay. So you have not -- actually let's go to</p> <p>21 Page 15 of your report, if we could.</p> <p>22 A. Okay.</p> <p>23 Q. You have written here at the bottom of the</p> <p>24 page, "It would be expected that an issuer contemplating</p> <p>25 effecting a reverse stock split would include such</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Okay. Let's go to Page 16 of your report.</p> <p>2 Under the financial damages suffered by Dr. Goldberg you</p> <p>3 state, "I have been asked by counsel to provide a</p> <p>4 methodology for calculating the damages to Dr. Goldberg</p> <p>5 if the court enters a judgment that he is entitled to</p> <p>6 the value of 23 and a half million post-split shares</p> <p>7 because Navidea has not yet issued those shares in</p> <p>8 accordance with the August 14th agreement and under</p> <p>9 Regulation D of the Securities Act of 1933."</p> <p>10 That's what you wrote, right?</p> <p>11 A. Yes.</p> <p>12 Q. Does this methodology have a name?</p> <p>13 A. No, other than what I gave it, a methodology</p> <p>14 to value shares at a pre-split basis.</p> <p>15 Q. And have you written about this methodology</p> <p>16 anywhere?</p> <p>17 A. No.</p> <p>18 Q. Have you read about this methodology anywhere?</p> <p>19 A. No.</p> <p>20 Q. Has it been peer reviewed by anybody?</p> <p>21 A. Yes.</p> <p>22 Q. Who has it been peer reviewed by?</p> <p>23 A. David Duffus.</p> <p>24 Q. When you say David Duffus peer reviewed it,</p> <p>25 you mean he read your report?</p>
<p style="text-align: right;">Page 83</p> <p>1 language in any contract referencing a specific number</p> <p>2 of shares for clarification purposes."</p> <p>3 What's the basis of that statement?</p> <p>4 A. My experience of transactions in which -- you</p> <p>5 know, transactional disclosures. If there's going to be</p> <p>6 anticipated future transactions where there's a</p> <p>7 transaction with a fixed number of shares -- let me</p> <p>8 rephrase.</p> <p>9 If there's a transaction with a fixed</p> <p>10 number of shares, it's pretty common to see that there's</p> <p>11 language in the agreement that specifies if there is a</p> <p>12 reverse split or a diluted or a creative kind of</p> <p>13 activity, that those shares will be adjusted for those</p> <p>14 activities. That's very common in my opinion from my</p> <p>15 experiences because you're talking about receiving a set</p> <p>16 number of shares.</p> <p>17 Q. Have you made a determination as to whether</p> <p>18 the 23 and a half million shares discussed in the August</p> <p>19 14th agreement were to be treated on a pre-split basis</p> <p>20 or a post-split basis?</p> <p>21 MR. ZIMMER: Objection.</p> <p>22 A. I have not. That's going to be a legal</p> <p>23 opinion. I just identified what the damage -- how you</p> <p>24 would calculate damage, what the damages would be based</p> <p>25 on what the courts decide.</p>	<p style="text-align: right;">Page 85</p> <p>1 A. He read through the second part of the review,</p> <p>2 yes.</p> <p>3 Q. Other than David Duffus, has it been peer</p> <p>4 reviewed?</p> <p>5 A. No.</p> <p>6 Q. Has this methodology been used by you before?</p> <p>7 A. No.</p> <p>8 Q. So other than the methodology that you've</p> <p>9 described here, there's no place to read about this as</p> <p>10 being an accepted methodology for valuation of pre-split</p> <p>11 shares?</p> <p>12 A. No, not -- no. I don't think this issue would</p> <p>13 be very common, but, you know, the answer is no.</p> <p>14 Q. And you did not -- you did not actually apply</p> <p>15 this methodology to the facts of this case, correct?</p> <p>16 A. The shares have never been issued so you</p> <p>17 couldn't apply it.</p> <p>18 Q. Well, you could pick a date, couldn't you?</p> <p>19 A. A hypothetical and say assuming that they had</p> <p>20 been issued on this date, this is how it would -- you</p> <p>21 could, but it would all be hypothetical. This was a</p> <p>22 methodology for valuing the damages if in a judgment --</p> <p>23 if a judge or a court ruled that Dr. Goldberg was</p> <p>24 entitled to 23 and a half million shares today.</p> <p>25 Q. And so in Step 1 you said, "The market cap of</p>

<p style="text-align: right;">Page 86</p> <p>1 a company is equivalent to the market value of the</p> <p>2 company's outstanding shares," correct?</p> <p>3 A. Yes.</p> <p>4 Q. So you effectively -- your model is that on</p> <p>5 day one, you have the market cap of Navidea, correct?</p> <p>6 A. The company is worth number of shares times</p> <p>7 share value. That's the market value.</p> <p>8 Q. On Day 2 a judgment is entered?</p> <p>9 A. Yes.</p> <p>10 Q. I'm following your methodology, right?</p> <p>11 A. Yes.</p> <p>12 Q. So your methodology says on Day 2, a judgment</p> <p>13 is entered. You then -- because you want to start from</p> <p>14 the market cap on Day 1, you're not going to look at Day</p> <p>15 2 because your concern is that Day 2 the market will be</p> <p>16 distorted by the entry of the judgment?</p> <p>17 A. If you put that many additional shares in,</p> <p>18 yes, it would distort the...</p> <p>19 Q. So you said you would add in the additional</p> <p>20 shares?</p> <p>21 A. Yes.</p> <p>22 Q. So whatever the outstanding shares were on Day</p> <p>23 1, you would add 23 and a half million to that?</p> <p>24 A. That is correct.</p> <p>25 Q. And that gives you a new market cap?</p>	<p style="text-align: right;">Page 88</p> <p>1 now owns a bigger percentage of the company?</p> <p>2 A. It does not. I was not attempting to say,</p> <p>3 "Here would be the effect of issuing 23 and a half</p> <p>4 million shares," because there could be restrictions.</p> <p>5 Maybe you couldn't issue 23 and a half million. And</p> <p>6 putting that many additional shares -- the company may</p> <p>7 not be able to issue that many shares, first of all.</p> <p>8 Putting that many more shares into the</p> <p>9 market would -- potentially could be catastrophic. I'm</p> <p>10 just trying to measure what the value of those shares</p> <p>11 would be of ownership of those shares, how that would</p> <p>12 change his slice, his apportionment of the value of the</p> <p>13 company as a whole just to come up with damages to him,</p> <p>14 not that he issues the shares.</p> <p>15 Q. How are you using damages in that context?</p> <p>16 A. But for kind of -- if the market would have</p> <p>17 time to absorb those shares, but for not having those</p> <p>18 shares, he would have had a greater ownership of the</p> <p>19 company. I'm just saying the company value stays</p> <p>20 static. His percentage of ownership of the company</p> <p>21 increases, would have increased as a result of that,</p> <p>22 and, therefore, that's the value of what he should have</p> <p>23 received but for not receiving those shares. I never</p> <p>24 anticipated he would actually receive those shares.</p> <p>25 Q. So is your model ultimately saying if the</p>
<p style="text-align: right;">Page 87</p> <p>1 A. That gives you the number of shares and then</p> <p>2 you divide that number into the previously existing</p> <p>3 market cap, and that gives you a valuation for those</p> <p>4 shares on Day 2 that Dr. Goldberg would have received.</p> <p>5 Q. And is your assumption that that would cause a</p> <p>6 stock drop?</p> <p>7 A. I was measuring a way to calculate damages,</p> <p>8 not that those shares would be issued because there</p> <p>9 would be -- there could be a significant impact on the</p> <p>10 market value by dropping 23 and a half million shares</p> <p>11 into the market.</p> <p>12 Q. But you said you were developing a new per</p> <p>13 share price?</p> <p>14 A. To come up with damages to -- what the damages</p> <p>15 would be for not getting 23 and a half million. I'm not</p> <p>16 suggesting that he's actually issued those shares. I'm</p> <p>17 just saying the values of those 23 and a half million</p> <p>18 shares today, whenever that would happen, is -- you</p> <p>19 know, the company is only worth so much. It's the</p> <p>20 market cap of the company.</p> <p>21 So his percentage of that company</p> <p>22 increases. He gets a bigger slice of the value of the</p> <p>23 company, not that the value of the company would change.</p> <p>24 Q. And would that take into account any</p> <p>25 additional restrictions that might be imposed because he</p>	<p style="text-align: right;">Page 89</p> <p>1 judge were to offer something, he owns five percent of</p> <p>2 the company before judgment and now he owns ten percent</p> <p>3 of the company after judgment? And so, therefore, his</p> <p>4 damages, as you've referred to them, is the delta</p> <p>5 between the ten percent ownership and the five percent</p> <p>6 ownership?</p> <p>7 MR. ZIMMER: Objection.</p> <p>8 A. Yes.</p> <p>9 Q. But you've -- and that's not tied to any</p> <p>10 actual transactions?</p> <p>11 A. That is correct.</p> <p>12 Q. And why is this not mere speculation that this</p> <p>13 works?</p> <p>14 A. I was asked to calculate what the damages</p> <p>15 would be to Dr. Goldberg if on a -- if the court said,</p> <p>16 "You should have received 23,000,000, but we can't issue</p> <p>17 it," what would the damages to Goldberg be for not</p> <p>18 receiving those shares? Because of restrictions and the</p> <p>19 impact it would have on the market to drop those in, it</p> <p>20 was a way of calculating his increased ownership of a</p> <p>21 company that has a fixed value.</p> <p>22 The value of the company should be the</p> <p>23 value of the company, not the value of the company based</p> <p>24 on the number of shares. So the value of the company is</p> <p>25 static, his ownership percentage would be changed, and</p>

23 (Pages 86 - 89)

<p style="text-align: right;">Page 90</p> <p>1 what would that value be under that new ownership?</p> <p>2 He didn't receive that value, he doesn't</p> <p>3 have that value, so that would be the damages.</p> <p>4 Q. And is that different than simply saying on</p> <p>5 Day 1 the stock price was trading at \$1.50 and so 23 and</p> <p>6 a half million shares on Day 2 times \$1.50 is its</p> <p>7 damages?</p> <p>8 A. It's a little different because those</p> <p>9 shares -- I'm measuring the damage as though the shares</p> <p>10 had not been issued. Because it is a -- the shares were</p> <p>11 issued, but the legends make them nonusable. So were</p> <p>12 the shares really issued to where he could take</p> <p>13 advantage of them and convert it to a value because</p> <p>14 they're nonusable with the legends in there, the</p> <p>15 additional legends.</p> <p>16 So if in the future those legends are</p> <p>17 removed and it's determined he should have received</p> <p>18 \$23,000,000, what would have been the share price at</p> <p>19 that point in time? I don't know. There could be all</p> <p>20 kinds of market factors that would have changed it.</p> <p>21 So I'm just saying a way to determine</p> <p>22 what the value of the company would have been, at that</p> <p>23 future date if the court determined he should have</p> <p>24 received 23,000,000, at that point in time it would have</p> <p>25 been traded -- it would have been valued on the market</p>	<p style="text-align: right;">Page 92</p> <p>1 A. The closing date, I couldn't measure it based</p> <p>2 on -- the closing date specifies that certain things</p> <p>3 must happen. Some of those things happened and some of</p> <p>4 them didn't, and they issued shares, which was not</p> <p>5 supposed to happen until the terms of the closing date</p> <p>6 had been satisfied. So I used as the closing date the</p> <p>7 date the shares were issued, November 22nd.</p> <p>8 It clearly didn't follow -- the shares</p> <p>9 weren't issued under the terms of when -- under the</p> <p>10 terms of the closing date.</p> <p>11 Q. You're not -- you haven't issued an opinion of</p> <p>12 what you think the closing date is under the August 14th</p> <p>13 agreement?</p> <p>14 A. No.</p> <p>15 Q. Correct?</p> <p>16 A. Correct, I have not. I have not issued an</p> <p>17 opinion on that. I'm sorry.</p> <p>18 Q. The last sentence says, "On November 22nd,</p> <p>19 2018, Navidea purportedly issued 18 and a half million</p> <p>20 shares to Dr. Goldberg."</p> <p>21 Is there a reason you're saying</p> <p>22 purportedly?</p> <p>23 A. There are probably two reasons for that in my</p> <p>24 mind. I don't want -- maybe three. One, I'm not trying</p> <p>25 to render a legal opinion so I don't want to say that it</p>
<p style="text-align: right;">Page 91</p> <p>1 at that date, not back historically on August 14th.</p> <p>2 Q. And is there any documents, treatises, papers</p> <p>3 that you relied on in creating this model?</p> <p>4 A. No. My experience.</p> <p>5 Q. But you have never done it before?</p> <p>6 A. No. I have never run into this -- it's kind</p> <p>7 of a hypothetical. How would you calculate the damages?</p> <p>8 This is how I would think would be a fair calculation on</p> <p>9 some future date if it's determined that he has a</p> <p>10 greater ownership percentage than -- or ownership</p> <p>11 percentage of the company at that date, how would I</p> <p>12 calculate that damage?</p> <p>13 Q. Okay. Let's look at the 23 and a half million</p> <p>14 adjusted for the split, which is at the end of Page 17.</p> <p>15 A. Okay.</p> <p>16 Q. You start this analysis -- you recite, "The</p> <p>17 August 14th agreement provides on the date of</p> <p>18 consummation of the transaction (such date, the closing</p> <p>19 date), Navidea will issue to Goldberg 23 and a half</p> <p>20 million shares of Navidea common stock, 18 and a half</p> <p>21 million currently and 5,000,000 on January 2nd, 2019,</p> <p>22 and the shares will be issued under Reg D of the</p> <p>23 Securities Act."</p> <p>24 You've told me that the closing date is</p> <p>25 not relevant to your analysis, correct?</p>	<p style="text-align: right;">Page 93</p> <p>1 did issue. I mean, it issued them, but they had</p> <p>2 restrictions, and so there's some question about whether</p> <p>3 they've been issued or not.</p> <p>4 I just went with the date that -- I'm not</p> <p>5 trying to render a legal opinion, just the date the</p> <p>6 shares were sent to Dr. Goldberg. They're not tradable</p> <p>7 at this point because of the legends. I'm not trying to</p> <p>8 deal with any of those. I'm not trying to deal with</p> <p>9 arguments over the agreement, whether the shares have</p> <p>10 been issued or all the terms of the agreement have been</p> <p>11 met. That's why I put the purported in there.</p> <p>12 Q. Okay. And in effect, you're assuming that the</p> <p>13 shares are issued on November 22nd and will be freely</p> <p>14 tradable after six months?</p> <p>15 MR. ZIMMER: Objection.</p> <p>16 A. Yes, six months if it was just -- well, let me</p> <p>17 back up. There are tranches of shares, so I said yes</p> <p>18 maybe too quickly. There were those that were issued on</p> <p>19 November 22nd. Then you had shares that were to be</p> <p>20 issued on January 2nd.</p> <p>21 And I'm trying to address those when he</p> <p>22 could have traded. So you have the six months under Reg</p> <p>23 D 144, but there is also a lockup period of 18 months.</p> <p>24 So you have six months and 18 months of overlay, so</p> <p>25 there's another year, 12 months added onto when he could</p>

<p style="text-align: right;">Page 94</p> <p>1 trade the shares.</p> <p>2 So six months under 144, 18 months under</p> <p>3 the lockup puts it out, you know, 18 months when the</p> <p>4 shares could actually be traded.</p> <p>5 Q. And those are only for shares that would be</p> <p>6 subject to the escrow?</p> <p>7 A. That's correct.</p> <p>8 Q. And you don't run -- you run those periods --</p> <p>9 let me start over.</p> <p>10 You run the six-month and 18-month</p> <p>11 periods concurrently?</p> <p>12 A. Yes.</p> <p>13 Q. Turning to Page 20, the paragraph after the</p> <p>14 escrow legend, you wrote, "Dr. Goldberg's ability to</p> <p>15 sell or otherwise dispose of the shares is left entirely</p> <p>16 to Navidea's sole discretion because only Navidea can</p> <p>17 authorize its transfer agent to remove the restrictive</p> <p>18 legends."</p> <p>19 A. Yes.</p> <p>20 Q. That's always a true statement relative to a</p> <p>21 restricted stock in an issuer, correct?</p> <p>22 A. It is.</p> <p>23 Q. You said, "This is neither authorized or</p> <p>24 required by Regulation D and the August 14th agreement</p> <p>25 contains no provision authorizing the placement of any</p>	<p style="text-align: right;">Page 96</p> <p>1 that.</p> <p>2 Then you have to report to the company</p> <p>3 that you've held them for that six months and the</p> <p>4 company would -- the reason you have to report it is</p> <p>5 because they have to integrate those shares now as</p> <p>6 tradable shares integrated in their disclosures. That's</p> <p>7 one. Or, two, they're incorporated into a public</p> <p>8 offering. So one of those two things has to happen.</p> <p>9 Those are both known factors. People can</p> <p>10 trade in shares that -- I mean, there's a value to</p> <p>11 shares that have normal Reg D restrictions on it. It's</p> <p>12 a time issue. It's putting them into the tradable</p> <p>13 shares. Those are kind of the two issues.</p> <p>14 There are no -- so those shares, they</p> <p>15 have value because those terms are preset. When it</p> <p>16 become -- and a company is not going to deny issuing</p> <p>17 those shares if you've held it the six months. I mean,</p> <p>18 you've done your part. They should be tradable under</p> <p>19 Reg D at that point.</p> <p>20 The additional legends they lock in</p> <p>21 escrow, those are at the full discretion of the company,</p> <p>22 Navidea. They can hold those. It's -- I can't say it</p> <p>23 any differently. It's at their full discretion. It's</p> <p>24 not regulated by you held it six months and then you</p> <p>25 reported it into your tradable shares. It's fully at</p>
<p style="text-align: right;">Page 95</p> <p>1 legends on the Navidea's shares."</p> <p>2 That authorization and the required is</p> <p>3 what we talked about before, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Your statement about the August 14th</p> <p>6 agreement, we discussed in connection with the summary</p> <p>7 of your opinions the fact that you're not attempting to</p> <p>8 interpret what's required under the August 14th</p> <p>9 agreement, correct?</p> <p>10 A. That is correct.</p> <p>11 Q. And for clarification, nothing in Reg D or</p> <p>12 Rule 144 -- let me rephrase.</p> <p>13 The issuer always has to remove a legend</p> <p>14 if there is a restrictive legend on the stock?</p> <p>15 MR. ZIMMER: Objection.</p> <p>16 A. The transfer agent actually removes the</p> <p>17 legend, but the company tells the transfer agent to</p> <p>18 remove it. Under Reg D and 144, there are two</p> <p>19 requirements. Basically one is you have to hold it the</p> <p>20 minimum time period, six months, which is -- you know,</p> <p>21 it could be six months to a year. Based on my</p> <p>22 understanding of the facts, I felt like it was six</p> <p>23 months, not a year. But you have to hold it during the</p> <p>24 holding period. You can't trade them prior to the</p> <p>25 restrictions. The legend couldn't be removed prior to</p>	<p style="text-align: right;">Page 97</p> <p>1 their discretion.</p> <p>2 Because it's fully at their discretion,</p> <p>3 no one knows when those shares might be usable and</p> <p>4 there's no value to them.</p> <p>5 Q. So what's the value of a -- is there a</p> <p>6 difference in value between a share containing what you</p> <p>7 referred to solely as the Reg D restriction four months</p> <p>8 after it was issued versus seven months after it was</p> <p>9 issued, assuming that the issuer has not removed the</p> <p>10 restriction?</p> <p>11 A. There is value because those are more</p> <p>12 measured. It's a time and reporting it by the issuing</p> <p>13 company. It shouldn't be as discretionary. You know,</p> <p>14 you've held it so they should incorporate it. They have</p> <p>15 plenty of time to incorporate it, you know, six months,</p> <p>16 or they have included it in a public offering.</p> <p>17 So those are known events. You can look</p> <p>18 at those events and say, "Well, I only have to hold it</p> <p>19 another month and the stock -- you know, there's these</p> <p>20 good things in the stock and I'm willing to take that</p> <p>21 risk and hold it now another month so there's value to</p> <p>22 those shares," not knowing when you might be able to use</p> <p>23 those shares, the uncertainty.</p> <p>24 You have no idea what the market</p> <p>25 conditions will be. There's little to no value with the</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 other restrictions that don't have time limitations, 2 measurement deadlines on them. I think the answer was 3 yes, and I explained the answer. 4 Q. But at the end of the six-month period, the 5 restriction is not automatically lifted. The issuer 6 still has to tell the transfer agent to lift the 7 restriction? 8 MR. ZIMMER: Objection. 9 A. Yes, sir. 10 Q. You have a statement on Page 20. It's the 11 last sentence of the second to the last paragraph that 12 says, "Dr. Goldberg did not receive the benefit for 13 which he bargained and has suffered financial harm and 14 damage." 15 You wrote that, correct? 16 A. Yes. 17 Q. Is that a legal conclusion? 18 MR. ZIMMER: Objection. 19 A. Well, it's a conclusion of the benefit of the 20 bargain. We, as consultants, are asked to do 21 measurements of damages based on the benefit of the 22 bargain. So it's anticipated that you would have 23 tradable shares after a certain period, and if those 24 shares are not tradable at that period, you didn't get 25 the benefit of the bargain.</p>	<p style="text-align: right;">Page 100</p> <p>1 A. What I did initially, I looked and said, "What 2 would be the high, what would be the low, and what would 3 it be if you traded at today's date," just giving a 4 sense of what that range would look like. 5 One could also say, "What was the average 6 of that time period," you know, weighted average of all 7 trades during that time period. 8 What I did is -- this was just kind of -- 9 I'm not rendering an opinion that this is a fixed dollar 10 amount. The way I worded it is I think I did a 11 valuation of it. 12 So if you look at the chart on Page 23, 13 you could take from the earliest point to what period 14 would you say at that point because it's still running. 15 The shares still aren't -- they have been issued, but 16 they're not usable, so when could they become usable. 17 It extends your average out indefinitely because you 18 don't know when it's going to be -- when the legends are 19 going to be removed, and you could actually value them 20 at that date, so high, low, today's date. 21 And then I looked at these trades. I 22 looked at that trade chart, and there was 80 million 23 shares traded on January 9th -- or June 9th, excuse me, 24 around that time period on the scale if you'll look at 25 that chart. It seemed to coincide with an earnings</p>
<p style="text-align: right;">Page 99</p> <p>1 I'm just measuring -- I'm not trying to 2 render a legal opinion. I'm just saying if that is the 3 case, if it was that those shares were supposed to have 4 been issued in accordance to Reg D and they could have 5 been tradable after six months or the overlying holding 6 period for the escrow and that wasn't and they aren't, 7 then there is damage because you don't have something 8 that you can use at that point in time. 9 Q. So the benefit of the bargain that you're 10 referring to here is the idea that, assuming a date of 11 issuance and a period of restriction, when that period 12 of restriction expires, there is damage and financial 13 harm? 14 A. If the shares haven't been issued, yes. 15 Q. Issued or if the legends haven't been removed? 16 A. The legends haven't been removed. If they're 17 usable, exactly. 18 Q. And then in this part of your report, Page 20 19 that we're on, you go through the exercise of assuming 20 that we're talking about -- or you're measuring damages 21 in connection with 1.175 million shares, correct? 22 A. Yes. 23 Q. So on Page 21, you say you're going to pick 24 three ranges, correct? 25 MR. ZIMMER: Objection.</p>	<p style="text-align: right;">Page 101</p> <p>1 release. A lot of activity, a lot of shares were traded 2 and the stock price went up, and it stayed up for a 3 period of time. 4 And so I took the weighted average also 5 of that period of time based on that earnings release, 6 saying, "I can't really use the average because I don't 7 know when the end is, so I'll use lowest point, highest 8 point, today's date and then look and see if I'd had 9 shares that I could have used and traded at any point in 10 that." 11 And Dr. Goldberg is a pretty astute 12 trader. He ran this company. So my sense, my feeling 13 was -- my feeling was that if there was that much 14 activity, if you look at that chart, trading activity, 15 that certainly would draw an astute investor's 16 attention, and you would look at that trend. 17 And so I looked at that trend and said, 18 "Okay. What would it be during that time period, if you 19 traded sometime in that time period?" So those were my 20 measurement dates. 21 Q. And are you calculating what you view to have 22 been what would be actual transactions? 23 MR. ZIMMER: Objection. 24 A. I'm not sure I understand the question. 25 Q. So you said -- you picked a range, right? You</p>

<p style="text-align: right;">Page 102</p> <p>1 picked three points in time. 2 A. Actually I picked four. 3 Q. What was the fourth? 4 A. The fourth was when the earnings release came 5 out, for about 30 days the stock stayed high and there 6 was a high level of activity, that if you would have had 7 access to the shares during that time, you didn't need 8 to trade the shares because you were not in want of 9 money at that point in time where you said, "I have to 10 have this money," and you were able to hold the shares. 11 If you had access at that time, a lot of 12 people -- quite a number of people took advantage of the 13 share activity at that point in time. So I looked at 14 that significant level of activity and said, "That needs 15 to be considered as well." So I used that measurement 16 date as well, four measurement dates. 17 Q. And is there any -- how did you pick those 18 dates? 19 A. Trying to give a range, high, low and today 20 when I wrote the report, and then was there a period in 21 between high, low and today that there was such level of 22 activity that it was unusual, abnormal? And then I 23 picked that point. 24 Q. Is this a methodology that's published 25 anywhere?</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. ZIMMER: Objection. 2 A. No. What I'm saying is I don't know when he 3 would trade the shares. I considered doing an average 4 of the shares, but I don't know when he would get the 5 shares. So but for, you know, not having the shares 6 tradable, was there periods looking at between today's 7 date when those shares could have been tradable? Was 8 there any periods in there -- other than low, high and 9 today's date, was there a period in there that seemed to 10 jump out and say -- you know, there's an event that if 11 you had the shares, you would attempt to take advantage 12 of it. 13 So that was that time period right after 14 the earnings release that I looked at and gave a 15 valuation. So I'm giving a range of values. But as 16 opposed to high, low and today's date, there was this 17 monumental event -- and I say monumental because the 18 volume of shares that were traded after that earnings 19 release, I used that date as well, the time period 20 around that date, and said, "In a range of damages, here 21 would be a range." 22 And if he had access to the shares, being 23 an astute investor, someone that, given his 24 qualifications, ran bio companies, was an investment 25 banker, if he had shares tradable at that point in time,</p>
<p style="text-align: right;">Page 103</p> <p>1 A. No. It was -- you know, if there are -- if 2 you look at this graph, and that's the point -- there's 3 no other activity levels even close to that level of 4 activity. So based on this earnings release, there was 5 a great deal of excitement in the market about the 6 shares, and the share value increased and held for a 7 30-day period. 8 Dr. Goldberg, being a former CEO of the 9 company, being very familiar with biopharmaceutical 10 shares, looking at that activity, I don't think it would 11 be that unreasonable to assume that that would have 12 caught his attention. And if he had had tradable shares 13 at that point, he would have been able to understand, as 14 so many people did -- it's not like -- I mean, the 15 volume of trading is -- there's nothing in this time 16 period that compares to the volume of trading when the 17 earnings release came out. 18 So it was a big deal. If he had shares 19 that he could trade, that would have been a time that he 20 would have known that the value of -- recognized the 21 value of the company at that point in time to make the 22 trade. 23 Q. So your assumption is that Dr. Goldberg would 24 simply hold the shares until some event occurred in the 25 future where the stock popped significantly?</p>	<p style="text-align: right;">Page 105</p> <p>1 he would have recognized with that earnings release, as 2 so many other people did, there was increased value of 3 the company. 4 Now, I'm not saying that he would have 5 traded necessarily exactly on that day, so I put a 6 30-day range around that and averaged that period. 7 Q. Your opinion on these trades is based on your 8 assessment of Dr. Goldberg's skill as a trader? 9 MR. ZIMMER: Objection. 10 A. No. I'm basing it on someone that is familiar 11 with the industry, watching what's going on in the bio 12 forma shares. That's where he's made his money. 13 Looking at those earnings releases that so many people 14 looked at and it increased the value of the company, 15 that he would have been able, like so many other people 16 did, to look at that earnings release and say, "This 17 company is more valuable." You know, there's been a 18 change. There's been something happened here that has 19 increased the value of the company. 20 Q. And what are you relying -- sorry, let me 21 rephrase. 22 Is there some treatise that you've looked 23 at that talks about the way people trade in publicly 24 traded companies? 25 MR. ZIMMER: Objection.</p>

<p style="text-align: right;">Page 106</p> <p>1 A. No, because I'm not looking at all people. 2 I'm looking at someone that ran this company, could 3 interpret an earnings release. He was the CEO. He ran 4 numerous pharmaceutical companies. He knew what was 5 going on in the industry. 6 If that many people in the market saw 7 that earnings release as a significant event to increase 8 the value of the company, he was as accomplished, and 9 particularly on this company, as so many other people 10 that invested in it, that it would have caught his 11 attention as well. 12 Q. Under your methodology for the 1.175 shares -- 13 1.75 million shares, he received 675,000 shares and can 14 trade them starting May 21st, 2019, correct? 15 A. I have a table if you want to see that. 16 Q. Yes, Page 21. 17 A. I just want to make sure we're both on the 18 same -- oh, I did catch one other typo. You probably 19 caught it too. If you go into the tranches, Tranche 3 20 on the release date, in the verbiage, I don't have the 21 right date on the chart. It's the wrong date. It is 18 22 months from the January 2nd date, which I don't have 23 that exact date here. I can find it -- oh, maybe it's 24 here in this verbiage. 25 Q. It's on Page 21. On Page 21 you say -- just</p>	<p style="text-align: right;">Page 108</p> <p>1 the lowest date? Why would he pick the highest date? 2 Why would he pick any of those dates? 3 There is a weighted assumption that an 4 event that big, if he had those shares to trade, he 5 would trade them during that time period. 6 Q. If you look at your chart on 23, there is a 7 spike in volume in November of 2019, correct? 8 A. Yes. 9 Q. So under your theory, why wouldn't he sell his 10 shares at that spike? 11 A. I don't know what drove that spike on that. I 12 don't know if there was some -- I didn't investigate 13 that spike, but there was no change really in activity 14 at that point, in share value. 15 So I don't know if that was -- there was 16 some new money that came in, and I don't know when that 17 new money came in if shares were issued with that new 18 money and that was the spike. But it wasn't tied to 19 like -- I don't believe tied to an earnings release or 20 something of that nature. 21 Q. Now, does the volume of shares being traded 22 impact your analysis? 23 A. Well, in this case, the volume actually 24 increased the value of the shares, so it was more 25 than -- it was volume based on some positive information</p>
<p style="text-align: right;">Page 107</p> <p>1 so we're all on the same page. Dr. Goldberg, under this 2 methodology that you're applying, gets 675,000 shares 3 freely tradable as of May 21st, 2019, correct? 4 A. That is correct, yes. 5 Q. Then he gets an additional 250,000 freely 6 tradable shares May 15th, 2020. 7 A. Yes. 8 Q. And then he gets another 250,000 June 25th, 9 2020? 10 A. Yes, but the chart is wrong. 11 Q. The chart is wrong, but the language in the 12 middle of that page? 13 A. Right. That's what I was looking for. I was 14 trying to find the language. 15 Q. And your methodology assumes that Dr. Goldberg 16 would have held 675,000 shares of Navidea for more than 17 a year before selling it, correct? 18 MR. ZIMMER: Objection. 19 A. Yes. You know, that was the -- if you were to 20 pick a point, if you had an ability to trade in any of 21 those time periods from when it became usable through 22 today's date, there was this time period where there was 23 significant activity with the earnings release. And I'm 24 saying that all of the dates that you could pick, 25 they're all -- you could argue, well, why would he pick</p>	<p style="text-align: right;">Page 109</p> <p>1 because the volume started trading and going up and the 2 value of the shares started increased significantly. 3 So you might argue that there was a 4 correlation between volume, and if there's a high volume 5 of trade, maybe there's a reduction in value. But in 6 this -- because you could argue that there's a high 7 volume because the stock is tanking. In this case there 8 is a high volume because the stock is increasing. 9 There was a measured event when the 10 earnings release came out that drove the value of the 11 stock up for over 30 days, and then it remained at a 12 high thereafter for quite an extended period of time. 13 Q. What was the earnings release? 14 A. It was -- what did it say? I don't understand 15 your question. 16 Q. Yeah, you said there was an earnings release 17 that popped the stock. 18 A. I don't know what drove it. There was an 19 earnings release at that time. I'm assuming that's what 20 drove the value up. I didn't look at all the earnings 21 releases. I didn't look to see what was disclosed at 22 that point in time that excited the market because it's 23 not stock I follow. 24 But when that earnings release came out, 25 the volumes went up and the stock price went up.</p>

<p style="text-align: right;">Page 110</p> <p>1 Q. Did Dr. Goldberg tell you he would have sold 2 during that time period? 3 A. No. 4 Q. You just assumed he would have? 5 A. I gave you my rationale for why. I did ask 6 him, "Are these shares that you could hold? Did you 7 need the money," you know, get his thought processes 8 there. His basic thought was the company was stagnant 9 during this time period like the share price shows, but 10 I didn't ask him if he would have traded when this new 11 news came out and the stock price went up. 12 I went through it as being an astute 13 trader, investor, ran the company as the CEO, was 14 involved in a private equity firm that invested in and 15 followed the biotech market, whatever it was in that 16 earnings release would have caught his attention. 17 Q. Is your assumption? 18 A. Is my assumption, that got so many other 19 people's attention. 20 Q. Right. But he has never told you -- 21 A. He never told me, no. 22 Q. He's never told you that it caught his 23 attention, correct? 24 A. No. 25 Q. He didn't tell you that he would have sold on</p>	<p style="text-align: right;">Page 112</p> <p>1 to buy or sell," correct? 2 MR. ZIMMER: Objection. 3 A. Well, if he's an active trader -- I don't know 4 how active he was in trading. 5 Q. And you didn't bother to find out, though, 6 correct? 7 A. I did not ask him that question, what his 8 volumes were of any trades, if any. 9 Q. When you pick your low point on -- you've 10 given us a range. You picked a date that they were 11 first tradable, and then you picked the high point, and 12 you settle on that average. But let's talk about the 13 low point for a minute. 14 So you're saying -- I just want to 15 understand this. For the low point -- sorry. It's not 16 the low point actually. You talk about the earliest 17 possible date, correct? 18 A. Yes. 19 Q. And so you said transfer one, which would be 20 675,000 shares -- 21 A. Yes. 22 Q. -- could be sold for \$1.43 per share? 23 A. Yes. 24 Q. Do you know what the volume of shares traded 25 were on that day?</p>
<p style="text-align: right;">Page 111</p> <p>1 those dates, correct? 2 A. No. That is correct. He didn't. 3 Q. And you never gathered information from 4 Dr. Goldberg as to what his actual trading history was 5 in the stock of Navidea, correct? 6 MR. ZIMMER: Objection. 7 A. No. 8 Q. Would that have been relevant to your 9 analysis? 10 A. Well, I don't know what his -- I don't know -- 11 I could have asked him for that. I don't know if he 12 would have shared that information, that private 13 information -- you know, it's not public information, 14 that's when he's outside the company -- what he traded. 15 I don't know how -- if you had -- you 16 must have had subpoena power or something that you got 17 that information. I didn't have access to that 18 information, what he traded. 19 Q. Well, you had access to Dr. Goldberg. 20 A. I did. 21 Q. You could have asked Dr. Goldberg, "How many 22 shares of Navidea have you owned over the past ten 23 years," correct? 24 A. I could have. 25 Q. And you could have said, "What made you decide</p>	<p style="text-align: right;">Page 113</p> <p>1 A. I do not, no. 2 Q. Would that be relevant to your analysis? 3 A. I'm looking at what potential damages were. I 4 just looked at the share price on that date. I was 5 trying to do a range, so it was the low. It didn't 6 really change the low, whether there's a high volume or 7 not. It would have been the low stock value. 8 Q. Are you familiar with something called 9 blockage discounts? 10 A. Yeah, large -- yes, large shares of stock that 11 you would trade. 12 Q. Would drive down the price of a share? 13 A. Would drive down, yes. 14 Q. And did you apply that in this analysis? 15 MR. ZIMMER: Objection. 16 A. I did not. You can see I didn't. 17 Q. What was the reason you didn't? 18 A. I was trying to just outline a range of what 19 potential damages could be because the stocks aren't 20 tradable. 21 Q. But your damages are based on the idea that he 22 would trade them at a certain number I thought -- sorry. 23 Let me take out the "I thought." 24 Your damages model is based on his 25 ability to trade the shares, isn't it?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. Yes. And he never had that ability to trade 2 the shares. So assuming he had that ability and he -- 3 it's all assumptions. So during this whole time period, 4 he never had the ability to trade his shares. 5 Q. So, in effect, your damage model says you're 6 just assuming the share price times the volume of shares 7 that he could have traded and said, "That's his 8 damages"?</p> <p>9 A. Yes. In essence, what I'm saying is that's 10 the value he could have gotten for those shares on that 11 day. But I didn't look at volume trades. I just said 12 the shares were at this value on that date. The shares, 13 if they had been and could have been traded on that date 14 at that volume, this would have been the amount they 15 would have been worth.</p> <p>16 Q. Okay. I want to be careful there for a minute 17 because I think you just said two different things. You 18 said the volume that he could have traded on that date.</p> <p>19 MR. ZIMMER: Objection. The record will 20 speak for itself what he said.</p> <p>21 Q. You're not adjusting -- you're taking as a 22 damage number -- let me rephrase.</p> <p>23 Isn't your damage model simply stock 24 price times shares?</p> <p>25 MR. ZIMMER: Objection.</p>	<p style="text-align: right;">Page 116</p> <p>1 damages.</p> <p>2 Q. Irrespective of whether he could have actually 3 traded the stock at that point due to a blockage issue?</p> <p>4 A. Yes. But irrespective of the fact the legends 5 were still on it and he couldn't trade it anyway. So I 6 was just trying to -- again, those shares times that 7 price gives you that value on that date of that stock 8 price.</p> <p>9 Q. And is there another example of this I can 10 look at --</p> <p>11 MR. ZIMMER: Objection.</p> <p>12 Q. -- where somebody has established a damage 13 range based on this theory that you put forth?</p> <p>14 MR. ZIMMER: Objection.</p> <p>15 A. They were going -- you would have to make 16 assumptions if you -- because the shares were not 17 tradable during this time period, so you had to make 18 some assumptions. You could make an assumption, as I 19 said, high, low, average during the time period, but the 20 shares still aren't tradable. So any assumption you 21 make is -- you're making assumptions, what-ifs. What if 22 he now today could trade them? Well, it would be then 23 the average from there until today's date.</p> <p>24 But he never had the ability to trade the 25 shares. So all I was saying is if he had the -- had had</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Yes.</p> <p>2 Q. You're not adjusting for what he could have 3 actually sold those shares for, correct?</p> <p>4 A. That is correct.</p> <p>5 Q. And when he entered into an agreement to get 6 restricted shares, he didn't know what he was going to 7 do with those shares in the future, correct?</p> <p>8 MR. ZIMMER: Objection.</p> <p>9 How could he know that?</p> <p>10 A. I don't know. I can't get in his head to know 11 what he would have done. So I don't know when he would 12 have traded them.</p> <p>13 Q. But you have made the assumption on your 14 range. You did get into his head, and you said he would 15 have traded on this date.</p> <p>16 MR. ZIMMER: Objection.</p> <p>17 A. If he had them, if they were available to him 18 at that point. What I said was that event was so 19 significant that it would have drawn his attention. It 20 was a more likely time period that he would have traded, 21 but he didn't have access to the shares at that point in 22 time. And I did not measure that -- I think your 23 original question was that I considered volumes.</p> <p>24 I just took the number of shares times 25 the stock price at that point in time as a range of</p>	<p style="text-align: right;">Page 117</p> <p>1 the ability to trade and he had traded on dates that 2 range the low, the high, the most current, and a 3 significant event had occurred. Had that event not been 4 in there, you know, that significant event been in 5 there, I would have just gone high, low and current 6 date. But it was so significant, it jumps out as an 7 additional measurement point.</p> <p>8 Q. There's no treatise you're aware of that 9 applies this model that you've come up with?</p> <p>10 A. No.</p> <p>11 MR. ZIMMER: Objection.</p> <p>12 Q. And there's no -- you have never published 13 this model, correct?</p> <p>14 MR. ZIMMER: Objection.</p> <p>15 A. No.</p> <p>16 Q. And it's not been peer reviewed other than 17 Mr. -- I've forgot his name already. Other than the 18 person who works with you?</p> <p>19 MR. ZIMMER: Objection.</p> <p>20 A. Yes.</p> <p>21 Q. You're familiar with the concept of discount 22 for lack of marketability, correct?</p> <p>23 A. Yes.</p> <p>24 Q. No application of that theory to your report, 25 correct?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. That is correct.</p> <p>2 Q. You do agree that the phenomena exists that if</p> <p>3 a significant block of stock in excess of the daily</p> <p>4 trading volume were to be sold, it would likely drive</p> <p>5 down the price, correct?</p> <p>6 MR. ZIMMER: Objection.</p> <p>7 A. I agree with that, yes.</p> <p>8 Q. On your chart on Page 23 you say, "I note</p> <p>9 Navidea's share price remains relatively constant</p> <p>10 between July 2020 and September 2021."</p> <p>11 Is that your statement?</p> <p>12 A. I'm sorry?</p> <p>13 Q. It's the second sentence below your chart.</p> <p>14 You wrote, "I note that Navidea's share price remains</p> <p>15 relatively constant between July 2020 and September</p> <p>16 2021."</p> <p>17 A. It's a small graph. I mean, there's a</p> <p>18 gradual -- I mean, there's a decline over that period,</p> <p>19 but it's less volatile than prior periods, I guess.</p> <p>20 But, yeah, that's what I wrote. I wrote that in here.</p> <p>21 Q. Well, how do you define volatility in that</p> <p>22 answer?</p> <p>23 A. I just looked at the chart, just noting</p> <p>24 that -- you know, you can see the volatility of it</p> <p>25 there. I didn't do volatility measurements on it. It's</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. But you didn't run a volatility analysis on</p> <p>2 it?</p> <p>3 A. I did not.</p> <p>4 Q. So if the stock goes from three dollars down</p> <p>5 to two dollars, it's losing a third of its value; is</p> <p>6 that correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Would that constitute relatively constant in</p> <p>9 your mind?</p> <p>10 A. Well, I would say volatility, if it went from</p> <p>11 two dollars to four dollars to 2.01 to four dollars,</p> <p>12 that's high volatility, you know. If it's going like</p> <p>13 this, you're doing volatility of this point to this</p> <p>14 point, but that volatility is more gradual. It's not as</p> <p>15 much a spike as certainly with volatility as earlier</p> <p>16 periods where it was up to seven dollars a share going</p> <p>17 to a dollar a share.</p> <p>18 Q. You've referred to Dr. Goldberg as a savvy</p> <p>19 investor, correct?</p> <p>20 A. Well, I would say if you invest as a</p> <p>21 private -- you know, in a private equity firm and you</p> <p>22 have ownership in that, you're investing in public</p> <p>23 companies' shares in the market, it makes you more savvy</p> <p>24 than a lot of people.</p> <p>25 Q. Is a savvy investor a term of art?</p>
<p style="text-align: right;">Page 119</p> <p>1 a visual looking at the chart.</p> <p>2 Q. But in July of 2020, the stock is trading at</p> <p>3 four dollars a share, almost up to five dollars at one</p> <p>4 point, correct?</p> <p>5 A. Yes. That's when that earnings release came</p> <p>6 out.</p> <p>7 Q. And by September 28th, 2021, the stock is</p> <p>8 trading at \$1.68 per share, correct?</p> <p>9 A. I don't have the exact measurement on that</p> <p>10 date, but looking at the chart, that's not too far off.</p> <p>11 Q. If you would turn back to Page 21 where you</p> <p>12 say, "If the shares had been issued in accordance with</p> <p>13 the August 14th agreement and sold at the current stock</p> <p>14 price on September 28th, 2021 for \$1.68 per share."</p> <p>15 A. Okay.</p> <p>16 Q. So you would agree that it was selling at</p> <p>17 \$1.68 a share on that date, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And so is it your testimony that \$4.95 per</p> <p>20 share and \$1.68 a share is a relatively constant share</p> <p>21 price?</p> <p>22 A. That's not a well stated statement. I think</p> <p>23 after that spike, it stayed relatively -- you know, as</p> <p>24 more constant. But, yeah, it is less volatile than</p> <p>25 prior periods.</p>	<p style="text-align: right;">Page 121</p> <p>1 A. No.</p> <p>2 Q. I'm not going to be able to find a savvy</p> <p>3 investor model?</p> <p>4 A. No.</p> <p>5 Q. You use -- sorry, I need to restart.</p> <p>6 On Page 24, you refer to a weighted</p> <p>7 average calculation. What is that?</p> <p>8 A. You take the share value and the number of</p> <p>9 shares traded during that time period and weight that</p> <p>10 through that time period. So it's kind of like</p> <p>11 averaging the number of shares and averaging the trading</p> <p>12 value, but it's weighted. So if you had higher trading</p> <p>13 volumes, it's weighted.</p> <p>14 Q. And you did that calculation?</p> <p>15 A. Just for that time period, roughly that 30-day</p> <p>16 time period where it was at a higher price.</p> <p>17 Q. That calculation though -- the actual</p> <p>18 calculations are not in this report, correct?</p> <p>19 A. No, no.</p> <p>20 Q. Is there a reason you didn't include them in</p> <p>21 the report?</p> <p>22 A. Actually the software that does weighted</p> <p>23 average calculations, you put in the information and it</p> <p>24 runs those calculations. It's not -- you get kind of</p> <p>25 the end results, but it doesn't give you how the sausage</p>

<p style="text-align: right;">Page 122</p> <p>1 was made. It doesn't give you the mathematical formulas 2 for it.</p> <p>3 Q. Are you familiar with a term called volume 4 weighted average price?</p> <p>5 A. It's very similar to what I did, yes.</p> <p>6 Q. How does it differ?</p> <p>7 A. I would say, as I understand it, there was no 8 difference because I weighted it based on volume and 9 pricing both in my weighted average.</p> <p>10 Q. Okay. Now I'm confused because you said they 11 were different, but now you're saying they're not 12 different.</p> <p>13 A. Well, different terms. You used a different 14 term than I use, but the methodologies for calculating 15 them are the same. That's what I was referring to, 16 different terminology.</p> <p>17 Q. And why do you apply the value weighted -- 18 well, can the terms be used interchangeably with you, or 19 should I stick to yours?</p> <p>20 A. You can use them interchangeably with me.</p> <p>21 Q. Why does someone use a volume weighted average 22 price?</p> <p>23 A. You have a beginning and an end, and so you're 24 looking at the weighted average. And again I just left 25 the volume out, but I told you in my explanation of</p>	<p style="text-align: right;">Page 124</p> <p>1 of these cases involve valuing restricted stock in a 2 publicly trade company?</p> <p>3 A. No.</p> <p>4 Q. Is there a case here that you think comes 5 close to that?</p> <p>6 A. Restricted stock of a public company? Let me 7 go through them. I don't think -- some of them dealt 8 with valuations, but not of restricted stock. None of 9 those did.</p> <p>10 Q. Have you ever been excluded as an expert?</p> <p>11 A. No.</p> <p>12 Q. Have any portions of your testimony ever been 13 excluded by a court or tribunal?</p> <p>14 A. No.</p> <p>15 MR. KAZAN: Let's take five minutes.</p> <p>16 MR. ZIMMER: Sure.</p> <p>17 Q. Mr. Orr, can you turn to Page 24 of your 18 report. So the last full paragraph begins with, "Fair 19 market value, the value between a willing buyer and a 20 willing seller is a useful metric in determining whether 21 an entity holds value."</p> <p>22 You wrote that, correct?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Verbal, please.</p> <p>25 A. Oh, yes.</p>
<p style="text-align: right;">Page 123</p> <p>1 weighted average it considers the volume. 2 So you have a beginning and an ending, so 3 you can weight it during that time period and come up 4 with here's what the average is, the weighted averages 5 were in that time period.</p> <p>6 Q. And that's meant to address the fact --</p> <p>7 A. Fluctuations, up and downs, levels it out.</p> <p>8 Q. Well, the fact is that a closing price may not 9 be reflective of the true price during the day, correct?</p> <p>10 A. That's true.</p> <p>11 Q. So if someone bought a block of 100 shares at 12 ten dollars and it was the last trade, that would be the 13 closing price, correct?</p> <p>14 A. Yeah.</p> <p>15 Q. It wouldn't necessarily be a good reflection 16 of the stock price as a whole, correct?</p> <p>17 A. That is true.</p> <p>18 Q. And that's why you would apply some sort of 19 weighted average approach, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you believe you did that for that time 22 frame July 2020 to August 7, 2020?</p> <p>23 A. Yes.</p> <p>24 Q. On your CV you list numerous cases, deposition 25 testimony and trial and arbitration testimony. Did any</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. That's not the methodology that you're using 2 to value Dr. Goldberg's shares in Navidea, though, 3 correct?</p> <p>4 A. That is correct. This is just for MT shares.</p> <p>5 Q. So the fair market value that you were trying 6 to establish for MT, was that based on valuing MT as a 7 whole or trying to value the five percent super voting 8 stock?</p> <p>9 MR. ZIMMER: Objection.</p> <p>10 A. It was an attempt to value MT as a whole 11 because outside investors were coming in with 12 \$25,000,000. What were they -- what ownership of MT 13 were they going to get for that investment?</p> <p>14 That would give you, you know, a 15 valuation, a fair -- you know, a willing buyer, willing 16 seller valuation of MT at that time.</p> <p>17 Q. And the \$25,000,000 number that you are using 18 is what you saw reflected in deposition testimony of Jed 19 Latkin, correct?</p> <p>20 MR. ZIMMER: Objection.</p> <p>21 A. Yes.</p> <p>22 Q. And emails with the New York Stock Exchange of 23 the listing requirements, correct?</p> <p>24 A. The discussions back and forth with the New 25 York Stock Exchange.</p>

<p style="text-align: right;">Page 126</p> <p>1 Q. But you never saw term sheets about that,</p> <p>2 correct?</p> <p>3 A. I did not. I will tell you I weighted it as</p> <p>4 significant because those were supposed discussions back</p> <p>5 and forth with the New York Stock Exchange, in which the</p> <p>6 SEC has oversight on as well. So if you're making those</p> <p>7 kinds of representations to the exchanges, SEC is</p> <p>8 watching that as well, then one would think those were</p> <p>9 legit or legit investors, you know.</p> <p>10 Q. When you say legit investors, what is the</p> <p>11 level of -- let me rephrase.</p> <p>12 What's the degree of certainty you need</p> <p>13 to have on an investment in order to value a company?</p> <p>14 MR. ZIMMER: Objection.</p> <p>15 A. The value of a company is the value at that</p> <p>16 point in time. If there are offers, as I described,</p> <p>17 between a willing buyer and willing seller, they're in</p> <p>18 the process of negotiating, they're making offers back</p> <p>19 and forth to each other, especially an investment of</p> <p>20 \$25,000,000. It's not like pulling five dollars out of</p> <p>21 your back pocket. Under the theory of fair market</p> <p>22 value, it is determined by a willing buyer and a willing</p> <p>23 seller, the level of confidence you have in that or that</p> <p>24 you need to have in that is the level of seriousness, I</p> <p>25 guess, between the willing buyer, willing seller.</p>	<p style="text-align: right;">Page 128</p> <p>1 for comparable sales?</p> <p>2 MR. ZIMMER: Objection.</p> <p>3 A. No. There's not going to be some treatise on</p> <p>4 this. If you're willing to go to jail for that</p> <p>5 statement to a government entity that you're in</p> <p>6 negotiations with someone for ownership in a company for</p> <p>7 25,000,000, I mean, I'm looking at they know where to</p> <p>8 find you. If that's not true and you're misleading the</p> <p>9 markets, you know, there is going to be serious</p> <p>10 repercussions.</p> <p>11 So there is no treatise. I considered it</p> <p>12 serious because the consequences of falsifying that</p> <p>13 information, it being misleading or untrue, are</p> <p>14 significant to the person making those false statements.</p> <p>15 Q. And why are you not characterizing it as</p> <p>16 merely aspirational?</p> <p>17 MR. ZIMMER: Objection.</p> <p>18 A. This was specific in that there were two</p> <p>19 investors for a specified amount that you're making a</p> <p>20 representation to a government entity and the New York</p> <p>21 Stock Exchange. That sounds more than -- that sounds a</p> <p>22 little more certain than aspirational as we are entering</p> <p>23 into discussions with potential investors. We're having</p> <p>24 ongoing discussions, you know.</p> <p>25 This is down to a specificity of who</p>
<p style="text-align: right;">Page 127</p> <p>1 If it was a passive kind of, "Oh, yeah,</p> <p>2 I'd make an investment in that," then you wouldn't be</p> <p>3 able to have a very high level of confidence in that.</p> <p>4 If it comes down to term sheets, things of that nature,</p> <p>5 now you're having a much higher level of confidence in</p> <p>6 that buyer's willingness and the seller's willingness to</p> <p>7 sell at that price.</p> <p>8 The fact that you're making</p> <p>9 representations to the SEC, a government entity, and the</p> <p>10 New York Stock Exchange, where to mislead them could be</p> <p>11 criminal, I assumed that making those statements to</p> <p>12 those entities, you are at a level of confidence</p> <p>13 because -- a pretty high level of confidence.</p> <p>14 Because if you are making false</p> <p>15 statements or ones that aren't legitimate, then you</p> <p>16 could be accused and prosecuted for, you know, trying to</p> <p>17 manipulate the market, you know, through false</p> <p>18 information. Stock manipulation, you know, people go to</p> <p>19 jail on that stuff all the time.</p> <p>20 So the fact that they're talking about</p> <p>21 it, they're having those discussions with the SEC, with</p> <p>22 the New York Stock Exchange made me feel that we were at</p> <p>23 a high level of confidence.</p> <p>24 Q. And is there any treatise or publication that</p> <p>25 you can point me to that says that that is a substitute</p>	<p style="text-align: right;">Page 129</p> <p>1 those investors are, a specificity of the amount of</p> <p>2 those investments at a time that there's a lot of</p> <p>3 scrutiny on the company. The company is looking at</p> <p>4 being delisted. You know, they have a lot of issues</p> <p>5 going on. You do not want to make false statements at</p> <p>6 that point in time.</p> <p>7 Q. But you did not in doing your analysis have</p> <p>8 details as to what either that \$10,000,000 would have</p> <p>9 looked like or that \$15,000,000 investment would have</p> <p>10 looked like, correct?</p> <p>11 MR. ZIMMER: Objection.</p> <p>12 A. No.</p> <p>13 Q. And you don't know who the counterparties were</p> <p>14 that they were discussing, correct?</p> <p>15 MR. ZIMMER: Objection.</p> <p>16 A. I do not.</p> <p>17 Q. Do you recall there being a reference by</p> <p>18 Navidea telling NYSE that they had alternative plans if</p> <p>19 those deals didn't go through?</p> <p>20 MR. ZIMMER: Objection.</p> <p>21 A. You know, when you said it, it seemed like,</p> <p>22 yeah, I saw something like that, but I can't remember</p> <p>23 the specificities of it.</p> <p>24 Q. Okay.</p> <p>25 MR. KAZAN: I don't believe I have any</p>

<p style="text-align: right;">Page 130</p> <p>1 further questions at this time.</p> <p>2 MR. ZIMMER: Nothing from me.</p> <p>3 (Deposition concluded at 2:35 p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 132</p> <p>1 therefor;</p> <p>2 _____ was not requested by the deponent</p> <p>3 or a party before the completion of the deposition.</p> <p>4 I further certify that I am neither</p> <p>5 attorney or counsel for, nor related to or employed by,</p> <p>6 any of the parties or attorneys to the action in which</p> <p>7 this deposition was taken. Further, I am not a relative</p> <p>8 or employee of any attorney of record in this case, nor</p> <p>9 am I financially interested in the outcome of the</p> <p>10 action.</p> <p>11 Subscribed and sworn to on this the</p> <p>12 2nd day of December, 2021.</p> <p>13</p> <p>14 <i>Tina Terrell Burney</i></p> <p>15 TINA TERRELL BURNLEY, CSR No. 2908</p> <p>16 Certified Shorthand Reporter</p> <p>17 in and for the State of Texas</p> <p>18 Certification expires 10/31/23</p> <p>19 Veritext Legal Solutions</p> <p>20 Firm Registration No. 571</p> <p>21 300 Throckmorton Street, Suite 1600</p> <p>22 Fort Worth, Texas 76102</p> <p>23 817.654.4006 Fax 817.335.1203</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 131</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 SOUTHERN DISTRICT OF NEW YORK</p> <p>3</p> <p>4 IN RE: NAVIDEA §</p> <p>5 BIOPHARMACEUTICALS §</p> <p>6 LITIGATION § Case No. 1:19-cv-01578-VEC</p> <p>7 § ECF Case</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 133</p> <p>1 Gregory Zimmer, Esq.</p> <p>2 gzimmer@gzimmerlegal.com</p> <p>3 December 2nd, 2021</p> <p>4 RE: Navidea Biopharmaceuticals v. Goldberg</p> <p>5 11/16/2021, Terry Lee Orr (#4894727)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 erratas-cs@veritext.com</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>

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2 Terry Lee Orr (#4894727)

3 E R R A T A S H E E T

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21 REASON_____

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23 _____

24 Terry Lee Orr Date

25

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1 Navidea Biopharmaceuticals v. Goldberg

2 Terry Lee Orr (#4894727)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Terry Lee Orr, do hereby declare that I

5 have read the foregoing transcript, I have made any

6 corrections, additions, or changes I deemed necessary as

7 noted above to be appended hereto, and that the same is

8 a true, correct and complete transcript of the testimony

9 given by me.

10

11 _____

12 Terry Lee Orr Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

16

17

18 _____

19 NOTARY PUBLIC

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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